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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 224.

THE SEATTLE NATIONAL BANK OF SEATTLE, PLAINTIFF IN ERROR,

vs.

THE CITY OF SEATTLE AND JOHN M. E. ATKINSON, AS TREASURER AND EX OFFICIO TAX-COLLECTOR OF SAID CITY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED FEBRUARY 14, 1895.

(15,790.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 7, 1896.

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a THE SEATTLE NATIONAL BANK OF SEATTLE, Plaintiff & Appellant, *v.* THE CITY OF SEATTLE *et al.*, Defendants & Respondents. } No. 1288.

Appeal from the supreme court of the State of Washington to the Supreme Court of the United States.

b THE SEATTLE NATIONAL BANK, Plaintiff and Appellant, — THE CITY OF SEATTLE *et als.*, Defendants and Respondents. } No. 13087.

Appeal from the superior court of King county to the supreme court of the State of Washington.

1 In the Superior Court for the County of King, State of Washington.

THE SEATTLE NATIONAL BANK, Plaintiff, *vs.* THE CITY OF SEATTLE, a Municipal Corporation, and Adolph Krug, as Treasurer and *ex Officio* Tax-collector of the said City of Seattle, Defendants. } No. 13087. Complaint.

To the judges of the above-entitled court:

The plaintiff above named, by its counsel, complains of the defendants above named and each of them, and for cause of action alleges:

I.

That at all times hereinafter referred to the plaintiff was a corporation created and doing a banking business as a national bank under the national banking laws of the United States of America and located at the city of Seattle, in the county of King, State of Washington.

II.

That at all the times hereinafter referred to the defendant The City of Seattle was — municipal corporation created by special charter under the general laws of the State of Washington, located in the county of King, in the State of Washington.

III.

That the defendant Adolph Krug is the duly elected and qualified treasurer of the city of Seattle aforesaid and *ex officio* collector of delinquent taxes in and for said city.

IV.

That the stock of the plaintiff consists of 2,500 shares of
2 $100.00 each; that all of the same is fully subscribed and paid up and is owned in part by citizens of the State of Washington resident in the State of Washington, and in part by citizens of the United States residing outside of the State of Washington.

V.

That on and prior to the 1st day of April, 1891, one C. W. Ferris was the duly elected and qualified comptroller and *ex officio* city assessor of the said city of Seattle, and by virtue of his office was charged by the provisions of subdivision 1 of section 15 and section 16 of article 9 of the charter of the city of Seattle, adopted on the 14th day of October, 1890, and by the provisions of the act of the legislature of the State of Washington approved March 9, 1891, and entitled "An act to provide for the assessment and collection of taxes in the State of Washington and declaring an emergency," which said act went into effect on the day of its approval, with the duty of preparing an assessment-roll of all property subject to taxation in the said city of Seattle, as owned and there subject to taxation on the first day of April, 1891.

VI.

That the said assessor thereupon proceeded to make out an assessment-roll for said city, wherein, *inter alia*, he did list to the plaintiff as owner thereof 2,500 shares of plaintiff's capital stock, valuing the same for the purposes of assessment and taxation thereunder at the rate of $100.00 per share, and did list the same *in solido* to plaintiff as owner thereof at a total valuation of $250,000.00.

3 VII.

That between the 1st day of April, 1891, and the 1st day of July, 1891, as required by said charter and statute, the said assessor did present the said assessment-roll to the city clerk of the city of Seattle.

VIII.

That thereafter, in the month of September, 1891, the city council of said city, being charged by said section 14 of article 9 of said charter with the duty so to do, did, by ordinance, fix the rate of tax to be levied, and did levy a tax upon the several properties listed in said assessment-roll to the respective owners thereof as so listed, including plaintiff, at the rate of 4 and ½ mills on each dollar of valuation as fixed in said roll as equalized, said levy being for municipal purposes.

IX.

That thereafter, in the month of September, 1891, the comptroller of said city, having extended said tax levy upon said assessment-roll, did deliver the said assessment-roll to the treasurer of said city.

X.

That thereafter, the said tax so as aforesaid assessed to plaintiff not having been paid in whole or in part, the city treasurer of said city did, on the first day of March, 1892, declare the same delinquent, and did thereupon add thereto a penalty in a sum equal to five per cent. thereof, to wit, the sum of $56.25; and on the first Monday in April, A. D. 1892, the defendant Adolph Krug, as such city
4 treasurer, did deliver to the comptroller of said city a complete delinquent list of all persons and property then owing taxes, including therein this plaintiff and the property so as aforesaid assessed to it, and within three days thereafter the said city comptroller did return said delinquent list to the defendant Adolph Krug, as such city treasurer, who is now most wrongfully proceeding to collect the said tax of and from the plaintiff in the sum total of $1,181.25, exclusive of interest and costs, and threatens to collect the same and the whole thereof of and from the plaintiff by distraining sufficient property, goods, and chattels of the plaintiff wherewith to make the same, and, unless restrained by order of this court, will, most wrongfully and unlawfully, by force of his official power, collect the said tax and the whole thereof from the plaintiff by levying upon its goods and chattels and thereby seriously injuring plaintiff's business and interfering with the banking business of plaintiff, to the great detriment of plaintiff, its stockholders and depositors, and thereby violating and setting at naught the provisions of the Revised Statutes of the United States under which plaintiff was created and has its corporate existence and from whence plaintiff derives its power to conduct business as a national bank.

XI.

That said assessment is an assessment *in solido* directly to the plaintiff, and said tax is levied upon and directly against the plaintiff, and because so assessed and levied is in direct contravention and violation of and is forbidden by the provisions of sections 5214 and 5219 of the Revised Statutes of the United States
5 and generally of the banking acts and laws of the United States.

XII.

That by the provisions of the said charter and of the act of the legislature of the State of Washington hereinbefore by its title referred to the shares of stock held by the shareholders of the plaintiff are not taxable, but are exempted from taxation.

XIII.

That on the 1st day of April, 1891, there existed in the said city of Seattle, State of Washington, taxable moneyed capital (other than and beyond that invested in shares of stock of national banks and beyond that invested in incorporated banks) owned by individual citizens of said State resident in said city and there invested in interest-bearing loans, discounts, and securities to them payable and

owing by other citizens of said State residing in said city, of vast amount, to wit, exceeding the sum of six million dollars.

XIV.

That on the said first day of April the total capitalization of national banks located in said city of Seattle was the sum of one and one-half millions of dollars; that the total capitalization of banks there located, but incorporated under the laws of the State of Washington, was the sum of eight hundred thousand dollars, and that at the same time large amounts of moneyed capital were invested in the city of Seattle by residents of said city in the stocks and bonds of insurance, wharf, and gas companies, and in addition to the foregoing there then existed in said city other moneyed capital amounting to at least six million dollars, being the other moneyed capital hereinbefore referred to; that in no case, as plaintiff is
6 informed and believes, is the stock of any national bank or the shares of stock of any national bank located in the city of Seattle valued for assessment at a less sum or assessed upon a valuation of less than the par value thereof; and, further, that the total assessment and total valuation in the assessment made by the city of Seattle throughout the said city of Seattle for the year 1891 of and upon the capital stock, bonds, and shares of banks, banking corporations, insurance, gas, and wharf corporations was the sum of $2,284,080.00, of which the sum of $1,766,000.00 was upon and of the stock of national banks in said city of Seattle located.

XV.

That the facts alleged in the preceding paragraphs hereof numbered XIII and XIV were then and during all of the times intervening between the first day of April, 1891, and the time of the return of the said assessment-roll by the city assessor to the city clerk well known to the said assessor, and during all of said times and until the 5th day of April, 1892, were well known to the several city officers hereinbefore referred to, and since the first day of March, 1892, have been and now are well known to the defendant, the treasurer of said city.

XVI.

That on the said first day of April, 1891, the entire capital, surplus, and undivided profits of plaintiff were invested as follows, to wit, $50,000.00 in bonds of the United States and the remainder in loans to residents of the State of Washington.

XVII.

That all of said other moneyed capital referred to in the foregoing paragraph hereof numbered XIV, the same being all the moneyed capital in the city owned by resident individual citizens and
7 invested, as aforesaid, in interest-bearing loans, discounts, and securities, except that owned by and invested in incorpo-

rated banks and located in the city, was purposely omitted from assessment and from taxation whatsoever by said city assessor and other taxing officers of the defendant city, and the same and the whole thereof has escaped taxation.

XVIII.

That the omission by the said city assessor and taxing officers of the said defendant city to either assess or tax said other moneyed capital last above referred to was made through, under, and by reason and in pursuance of an agreement entered into in the year 1891, prior to the first day of April of said year, between the several county assessors of the several counties in the said State of Washington, whereby it was agreed upon between them that such omission should be made by them and all of them, and said omission and said agreement to omit was in pursuance of an opinion rendered by the attorney general of the State of Washington to the several county assessors at their request advising such omission, the said attorney general being, by virtue of his office, required by the laws of the State of Washington to render such opinion to said assessors upon request; which said agreement was adopted by the said city assessor and the defendant city.

XIX.

That such omission necessarily operated as a discrimination in favor of other moneyed capital in the hands of individual citizens of said State resident and taxable in said city and against
8 shares of stock of national banking associations located within said city, including plaintiff, and necessarily resulted in the taxation of the shares of such national banks, including plaintiff, at a greater rate than other moneyed capital in the hands of the individual citizens of said State resident and taxable in said city, all of which was well known to and most wrongfully intended by said city assessors and said several taxing officers of the defendant city and to and by the defendant city, and all of which is in direct violation and forbidden by the provisions of the Revised Statutes hereinabove specifically referred to.

XX.

That for the several reasons aforesaid the said tax assessed to the plaintiff is inequitable, illegal, and void, whether the same be an assessment *in solido* to plaintiff or an assessment upon its shares of stock to the individual owners thereof, and the aforesaid attempted and threatened proceeding to collect the same from the plaintiff on the part of the defendant, the said city treasurer, is unjust and oppressive and should be restrained. To the end that the plaintiff may obtain the relief to which it is justly entitled in the premises, plaintiff prays that upon the hearing and determination of the matters herein involved it may be decreed by this court that said assessment to plaintiff is illegal and said tax upon the plaintiff particularly

described and referred to in its foregoing complaint is void, and, further, that by order of this court a permanent injunction may issue restraining and enjoining the defendants and each of them from further in any way proceeding in the collection of said tax.

9 Plaintiff further prays that pending the final hearing of this cause upon its merits a temporary injunction be issued by the court, restraining the collection of the tax to plaintiff hereinbefore referred to and described or any part thereof during the time which shall intervene between the filing of this complaint and the final decree in this action, and that pending the foregoing application for a temporary injunction the defendants may be so restrained by order of this court, and that a day be set by the court for the hearing of said application for a temporary injunction.

Plaintiff prays further that it have such other relief as it is in equity entitled to receive and recover its costs and disbursements in this action of and from the defendants.

PRESTON, CARR & PRESTON AND
JAMES B. HOWE,
Attorneys for Plaintiff.

STATE OF WASHINGTON, }
County of King, } *ss:*

E. W. Andrews, being first duly sworn, on oath says that he is cashier of plaintiff in the above-entitled action; that he has heard the foregoing complaint read, knows the contents thereof, and believes the same to be true; that he makes this affidavit because —.

E. W. ANDREWS.

Subscribed and sworn to before me this 8th day of April, 1892.

J. T. DE BOLT,
Notary Public, Residing at Seattle, Washington.

(Endorsed:) Filed Apr. 8, 1892. W. B. Spencer, clerk, by Geo. F. Stanley, deputy.

10 In the Superior Court of King County, State of Washington.

SEATTLE NATIONAL BANK OF SEATTLE, Plaintiff, *vs.* THE CITY OF SEATTLE *et al.*, Defendants. } No. 13087. Amended Answer.

Come now the defendants, by George Donworth, their attorney, and make this their amended answer to the complaint herein as follows:

I.

These defendants deny each and every allegation contained in the sixth paragraph of said complaint, except that defendants admit that twenty-five hundred shares of plaintiff's capital stock were assessed in the name of the plaintiff, valuing the same for the pur-

poses of assessment and taxation thereunder, at the rate of one hundred dollars per share, at a total valuation of two hundred and fifty thousand dollars.

II.

Answering the allegations contained in the tenth paragraph of said complaint, these defendants deny that said defendant, Krug, is wrongfully proceeding to collect said taxes, and deny that said Krug will wrongfully or unlawfully collect said tax; and these defendants deny that the acts, doings, and proceedings of these defendants for the enforcement and collection of said tax will in any manner or way injure plaintiff's business or interfere with the banking business of plaintiff or will interfere with said business to the detriment of plaintiff or of plaintiff's stockholders or
11 depositors, and deny that thereby these defendants violate or set at naught the provisions of the Revised Statutes of the United States; deny that in any respect the acts, doings, and proceedings done or intended by these defendants are in any way wrongful, unlawful, or detrimental to the business of the plaintiff or in any way injurious to any person.

III.

These defendants deny each and every allegation contained in the eleventh paragraph of said complaint, except that defendants admit that said tax is levied in the name of the plaintiff, to be paid by the plaintiff as the agent of each of its stockholders.

IV.

These defendants deny each and every allegation contained in the twelfth paragraph of said complaint.

V.

These defendants deny each and every allegation contained in the thirteenth paragraph of said complaint; deny that there was on the first day of April, 1891, or at any time since said day, any taxable moneyed capital (other than and beyond that invested in shares of stock of national banks and beyond that invested in incorporated banks) of any amount whatever, except as contained in the assessment-roll and tax-list for said year.

VI.

These defendants deny each and every allegation contained in the fourteenth paragraph of said complaint, except that these defendants admit that on the said first day of April, 1891, the total capitalization of national banks located in said city of Seattle was the sum of one and one-half millions of dollars, and that in no case is the stock of any national bank or shares of any national
12 bank located in said city valued for assessment at a less sum or assessed upon a valuation of less than the par value

thereof. These defendants deny that there was at said time any taxable moneyed capital whatever in said city other than as duly listed, valued, and assessed at the actual cash value in the assessment and tax rolls of said city for said year.

VII.

These defendants deny each and every allegation contained in the fifteenth paragraph of said complaint, except that these defendants admit that the several city officers mentioned in said complaint had knowledge during said times of the facts admitted in the sixth paragraph of this answer.

VIII.

These defendants deny any knowledge or information sufficient to form a belief as to each and every allegation contained in the sixteenth paragraph of said complaint.

IX.

These defendants deny each and every allegation contained in the seventeenth paragraph of said complaint.

X.

These defendants deny each and every allegation contained in the eighteenth paragraph of said complaint.

XI.

These defendants deny each and every allegation contained in the nineteenth paragraph of said complaint.

XII.

These defendants deny each and every allegation contained in the twentieth paragraph of said complaint.

13 And for a further, separate, and affirmative defense the defendants allege as follows:

That on, to wit, the 15th day of May, 1891, the plaintiff on demand of the city assessor of said defendant city, made for the purpose of listing and assessing its shares of stock, did furnish to said assessor a list of the names and residences of its stockholders holding its stock on the first day of April, 1891, and in and by said list informed said assessor and said defendant city that twenty-five hundred shares of its capital stock were owned on said day by ninety-six stockholders whose names and residences were given to said assessor in said written list; that the said shares of stock were duly listed in the assessment-roll of defendant city for said year by the said assessor, and were assessed in the name of the plaintiff, and the name and residence of each of said stockholders was entered in said assessment-roll as a part of said assessment, and said plaintiff is and

was required to pay the taxes assessed thereon as the agent of each of its stockholders, which taxes were duly, legally, and properly assessed and rated in said assessment-roll, and each and all of the acts and doings of said city and its officers in the premises were and have been duly done and performed in accordance with the law and the charter of said city, and said taxes alleged in the complaint are now due and delinquent; that said assessment-roll and tax-list is now on file, duly completed and certified, in the office of said city treasurer and is in due form of law.

Wherefore defendants pray that they be hence dismissed and recover of the plaintiff their costs and disbursements herein.

GEORGE DONWORTH,
Attorney for Defendants.

14 STATE OF WASHINGTON, } ss:
County of King, }

J. T. Ronald, being first duly sworn, on oath says that he is mayor of The City of Seattle, defendant in the above-entitled action; that he has heard the foregoing amended answer read, knows the contents thereof, and believes the same to be true; that he makes this affidavit because said city is a municipal corporation and affiant is its mayor.

J. T. RONALD.

Subscribed and sworn to before me this 19th day of Nov., A. D. 1892.

GEORGE DONWORTH,
Notary Public in and for the State of Washington,
Residing at Seattle.

Service of the within paper on the undersigned this 19th day of Nov., 1892, is hereby admitted.

PRESTON, CARR & PRESTON,
Attorney- for Pl'ff.

(Endorsed:) Filed Nov. 21, 1892. W. B. Spencer, clerk, by H. H Philips, deputy.

15 In the Superior Court of King County, State of Washington.

THE SEATTLE NATIONAL BANK OF SEATTLE, Plaintiff, *v.* THE CITY OF SEATTLE *et al.*, Defendants. } No. 13087. Reply.

Comes now the plaintiff and for reply to the further, separate, and affirmative defense set up in the amended answer of the defendants—

I.

Admits that in the year 1891 the plaintiff, on demand of the city assessor of the defendant city, did furnish to said assessor a list of

the names and residences of its stockholders holding its stock on the 1st day of April, 1891.

It denies each and every allegation made or contained in said affirmative defense save such thereof as it has hereinbefore expressly admitted.

Wherefore the plaintiff prays as in its complaint in this action.

PRESTON, CARR & PRESTON AND
JAMES B. HOWE,
Attorneys for Plaintiff.

16 STATE OF WASHINGTON, } ss:
County of King, }

R. G. Hooker, being first duly sworn, on oath says that he is cashier of the plaintiff corporation in the above-entitled action; that he has heard the foregoing reply read, knows the contents thereof, and believes the same to be true; that he makes this affidavit in behalf of the said corporation as such officer thereof.

ROBERT G. HOOKER.

Subscribed and sworn to before me this 1st day of June, 1893.

S. FOSTER ELLEY,
Notary Public, Residing at Seattle, Washington.

Received copy of the within reply and service of the same admitted this 2nd day of June, 1893.

GEORGE DONWORTH,
Attorney for Def't-.

(Endorsed:) Filed Jun- 3, 1893. T. W. Gordon, clerk, by H. H. Smith, deputy.

17 In the Superior Court of the State of Washington for the County of King.

SEATTLE NATIONAL BANK OF SEATTLE, Plaintiff, *vs.* THE CITY OF SEATTLE and ADOLPH KRUG, Treasurer and *ex Officio* Tax-collector of said City, Defendants.	No. 13087.	Decree.

THURSDAY, *June* 15, 1893.

This cause coming on regularly for trial this day before the Honorable J. W. Langley, one of the judges of the above-entitled court, the plaintiff appearing by Harold Preston and E. M. Carr, its attorneys, and the defendants appearing by George Donworth, corporation counsel of the defendant city, the defendant, by its counsel, objects to the complaint and to the reception of any evidence in support thereof on the ground that the said complaint does not state facts sufficient to constitute a cause of action against the defendants or either of them, and, the court having heard argument

thereon, the said objection is by the court sustained, the plaintiff preserving its exception to the order of the court sustaining such objection; which exception is by the court allowed.

And now, the plaintiff electing to stand upon its complaint, it is, upon motion of defendants, by the court ordered and adjudged that the action be, and the same is hereby, dismissed; and it is hereby adjudged and decreed that because of said insufficiency of the plaintiff's complaint the defendants and each of them do have and
18 recover of and from the plaintiff the costs of this action, to be taxed.

Done this 12th day of June, 1893.

J. W. LANGLEY, *Judge.*

To the foregoing order of the court dismissing the action and to the foregoing decree of the court for costs to the defendant the plaintiff at the time preserves due exception and its exception is by the court allowed.

J. W. LANGLEY, *Judge.*

19 In the Superior Court of the State of Washington for the County of King.

THE SEATTLE NATIONAL BANK OF SEATTLE, Plaintiff, *vs.* THE CITY OF SEATTLE and ADOLPH KRUG, Treasurer and *ex Officio* Tax-collector of said City, Defendants.	No. 13087. Journal Entry.

THURSDAY, *June* 15, 1893.

Now, at the time judgment is rendered in the above-entitled cause, the plaintiff, by its attorneys, in open court gives notice that it appeals to the supreme court of the State of Washington from the judgment heretofore rendered in this action on this day by the above-entitled court dismissing the action, and for costs to the defendants, and from the whole of said judgment.

Whereupon, the said notice of appeal having, as aforesaid, been duly given in open court on this day, at the time of the rendition of said judgment, it is by the court ordered that the clerk of the court do make entry of such notice of appeal in the journal of the court.

Done this 12th day of June, A. D. 1893.

J. W. LANGLEY, *Judge.*

20 In the Superior Court of the State of Washington for the County of King.

THE SEATTLE NATIONAL BANK OF SEATTLE, Plaintiff, *vs.* THE CITY OF SEATTLE and ADOLPH KRUG, Treasurer and *ex Officio* Tax-collector of said City, Defendants.	No. 13087. Appeal and Stay Bond.

Know all men by these presents that we, The Seattle National Bank, the plaintiff above named, as principal, and F. L. Fehrens and Robert G. Hooker, as sureties, are held and firmly bound unto the above-named defendants and each of them in the full sum of twenty-five hundred dollars ($2,500.00); payment of which, well and truly to be made, to the above-named defendants we and each of us bind ourselves, and we, the said sureties, do bind our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of June, A. D. 1893.

The condition of the foregoing obligation is such that whereas the above-named principal has taken an appeal to the supreme court of the State of Washington from the judgment of the above-entitled court in the above-entitled action dismissing the action and for costs to the defendants;

And whereas at the time of the rendition of said judgment a temporary injunction was in force by order of the court restraining the defendant- and each of them from proceeding to collect the
21 tax described in the plaintiff's complaint or any part thereof from the plaintiff:

Now, if the said plaintiff shall well and truly pay all costs and shall save the above-named defendants harmless from all damages by reason of the appeal, and shall pay all costs and damages that may be awarded against it, the plaintiff above named, on such appeal or on the dismissal thereof, and if the said plaintiff, the appellant, shall satisfy and perform the judgment appealed from in case it shall be affirmed, and any judgment or order which the said supreme court or any appellate court may render or make or order to be rendered or made by said superior court, and if the said plaintiff, appellant, shall pay to the said defendants all costs and damages that may be adjudged against the said plaintiff, appellant, on the said appeal, and all costs and damages that may accrue to the said defendants by reason of such injunction remaining in force, then this obligation shall be void; otherwise to remain in full force and effect.

SEATTLE NATIONAL BANK,
By ROBERT G. HOOKER, *Its Cashier.*

[Corp. Seal S. N. B.]

F. L. FEHRENS. [SEAL.]
ROBERT G. HOOKER. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. R. BELL.
S. FOSTER EELLEY.

22 STATE OF WASHINGTON, } ss:
County of King, }

F. L. Fehrens and Robert G. Hooker, the sureties on the above and foregoing bond, being first duly sworn, each for himself on his oath deposes and says: I am one of the sureties named in the above and foregoing bond. I am not an attorney or counsellor at law, sheriff, clerk, or other officer of any court of record, and am worth the sum of twenty-five hundred dollars, over and above all my just debts and liabilities, in property within the State of Washington and exclusive of property exempt from execution. I am a resident of the State of Washington.

F. L. FEHRENS.
ROBERT G. HOOKER.

Sworn to before me and subscribed in my presence this 12 day of June, A. D. 1893.

W. R. BELL,
Notary Public in and for the State of Washington,
Residing at the City of Seattle, said State.

(Endorsed:) Filed Jun- 15, 1893. T. W. Gordon, clerk, by H. H. Smith, deputy.

23 In the Superior Court for the County of King, State of Washington.

THE SEATTLE NATIONAL BANK OF SEATTLE, Plaintiff, *vs.* THE CITY OF SEATTLE and ADOLPH KRUG, Treasurer and *ex Officio* Tax-collector of said City, Defendants. } No. 13087. Statement of Facts.

Be it remembered that on this 12th day of June, 1893, the above-entitled cause came on regularly to be heard before the Honorable J. W. Langley, one of the judges of the above-entitled court, the plaintiff appearing by Harold Preston and E. M. Carr, its attorneys, and the defendants appearing by George Donworth, corporation counsel of the defendant city, and the following proceedings were had:

The plaintiff called as a witness Frank Paul, who was duly sworn. The plaintiff then proceeded to interrogate the said witness as to the matters alleged in its complaint.

Thereupon the defendants objected to any testimony whatever being given in the case for the reason that the complaint of the plaintiff did not state facts sufficient to constitute a cause of action, and the court, having heard argument upon said objection, the same was sustained. To the order of the court sustaining the same the plaintiff at the time preserved due exception and its exception was allowed by the court.

Thereupon the plaintiff, by its attorneys, offered proof to establish all and singular the allegations of its complaint.

24 The defendants, by their attorney, objected to the reception of the evidence or any thereof upon the ground that the complaint did not state facts sufficient to constitute a cause of action, and, after argument, the objection of the defendants was sustained and the testimony ruled out; to which order of the court the plaintiff took due exception, which was by the court allowed.

Thereupon the plaintiff announced its election to stand upon its complaint, and the court, upon the motion of the defendants, dismissed the action, rendering judgment in favor of the defendants against the plaintiff for the costs thereof; to which judgment of the court the plaintiff at the time preserved due exception.

No other, further, or different proceedings were had, and the foregoing constitutes an entire record of all the proceedings in the action, aside from those proceedings by way of pleadings and in the matter of granting restraining order and temporary injunction, which matters have been previously made of record in the action.

I, J. W. Langley, do hereby certify that the above-entitled cause was tried before me as above recited and judgment rendered therein by me as above recited, and that the matters and proceedings embodied in the foregoing statement are matters and proceedings in the said cause, and the same are hereby made a part of the record therein, and the said statement contains all the material facts, matters, and proceedings heretofore occurring in the cause and not already a part of the record therein.

In witness whereof I have hereunto set my hand, at the county of King, State of Washington, this 12th day of June, A. D. 1893.

J. W. LANGLEY, *Judge.*

25 The defendants in the above-entitled cause, by their attorney, hereby acknowledge, this 12th day of June, 1893, to have been duly served by the plaintiff with a copy of the foregoing statement of facts.

We hereby agree that said statement of facts is correct in all respects, and hereby notify the plaintiff that we will not propose any amendments thereto.

GEORGE DONWORTH,
Attorney for the Defendants.

It is hereby stipulated between the plaintiff and the defendants, by their respective counsel, that application may be made to the judge of the court before whom the above-entitled cause was tried, to wit, the Honorable J. W. Langley, at his court-room, in the city of Seattle, on the 12th day of June, 1893, to settle and certify the foregoing statement of facts, and that at such time and place the judge may settle and certify the same, and that neither party will ever object *to* take exception to the statement in any respect because

of its having been settled and certified upon this stipulation instead of upon notice.

PRESTON, CARR & PRESTON,
Attorneys for the Plaintiff.
GEORGE DONWORTH,
Attorneys for the Defendants.

(Indorsed:) Filed Jun- 15, 1893. T. W. Gordon, clerk, by H. H. Smith, deputy.

26 STATE OF WASHINGTON, } ss:
County of King, }

I, T. W. Gordon, county clerk of King county and *ex officio* clerk of the superior court of the State of Washington for the county of King, do hereby certify that the foregoing is a full, true, and correct transcript of so much of the record in said action No. 13087 as I am required to transmit to the supreme court on appeal, together with the original statement of facts therein.

I further certify that this record has been held in my office until this time on account of the sickness and absence of Mr. Harold Preston, one of counsel for the appellant, who had sole charge of said matter, it being his desire to examine said record before its transmission to the supreme court.

In testimony whereof I have hereunto set my hand and the seal of said court this 30th day of March, A. D. 1894.

[Seal of Superior Court of King County.]

T. W. GORDON, *Clerk.*

(Indorsed:) No. 1288. Filed Apr. 3, 1894. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

27 THE WASHINGTON NATIONAL BANK OF SEATTLE, Appellant,
v.
THE COUNTY OF KING and BYRON PHELPS, County Treasurer and *ex Officio* Tax-collector of said County, Respondents. } No. 1280.

THE COMMERCIAL NATIONAL BANK OF SEATTLE, Appellant,
v.
THE COUNTY OF KING and BYRON PHELPS, County Treasurer and *ex Officio* Tax-collector of said County, Respondents. } No. 1281.

THE WASHINGTON NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } No. 1282.

THE COMMERCIAL NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } No. 1283.

THE FIRST NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } No. 1284.

THE BOSTON NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } No. 1285.

THE NATIONAL BANK OF COMMERCE OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } No. 1286.

THE PUGET SOUND NATIONAL BANK OF SEATTLE, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } No. 1287.

THE SEATTLE NATIONAL BANK, Appellant,
v.
THE CITY OF SEATTLE and ADOLPH KRUG, Tax-collector of said City, Respondents. } No. 1288.

Consolidated Cases. Filed Oct. 22d, 1894.

28 STILES, *J.*:

The complaints in these cases were drawn with a view to

obviate the objections sustained to the complaint in First Nat. Bank of Aberdeen *v.* Chehalis Co., 6 Wash., 64, 32 Pac. 1051. This endeavor is made by the allegation that certain taxable moneyed capital, alleged in the former case to be "owned by citizens of said State, resident in said county, and there invested in loans and securities to them payable, and owing by other citizens of said State, residing in said county," is "owned by individual citizens of said State, resident in said county (or city), and there invested in interest-bearing loans, discounts, and securities to them payable, and owing by other citizens of said State, residing in said county (or city), of vast amount." It is also alleged in these cases that the capital referred to is "all the moneyed capital in the State owned by resident individual citizens, and invested as aforesaid in interest-bearing loans, discounts, and securities, except that owned by and invested in incorporated banks located in this State," and that it was purposely omitted from assessment and taxation. In these cases our attention is particularly called again to the case of Boyer *v.* Boyer, 113 U. S., 689, 5 Sup. Ct., 706, and it is claimed that the allegations contained in the complaints before us, as well as in the case of First Nat. Bank of Aberdeen *v.* Chehalis Co., *supra*, are equally as strong as those of the Boyer case, in which the Federal Supreme Court held that answer should be made to the allegations of the bill. While, as was remarked in Mercantile Bank *v.* City of New York, 121 U. S., 138, 7 Sup. Ct., 826, in the Boyer case no attempt was made "to define the meaning of the words, 'moneyed capital in the hands of individual citizens,' as used in the statute, or to enumerate all the various kinds of property or investments that came within its description, or to show that shares of stock in the hands of stockholders of every institution, company, or corporation of a State, having a capital employed for the purpose of earning dividends or profits for its stockholders, were taxable as moneyed capital in the hands of individual citizens," it was made to appear in the former case that the burden of county taxation had, by the Pennsylvania act of 1844, been removed from a large body of certain specific moneyed capital which came into competition with capital invested in national banks, and that, therefore, a discrimination existed against the latter. The capital exempted for purposes of local taxation was made taxable for State purposes, but the stock of national banks was, by the Pennsylvania act of 1870, taxable both for State and county purposes. In this a discrimination was held to exist, and for that reason an answer was required to the bill. But, whatever may be said of the decision in Boyer *v.* Boyer, it seems clear to us that the case of Mercantile Bank *v.* City of New York, while it does not overrule the decision in the former case, so clearly sets forth the principles upon which alone the question of what is "moneyed capital in the hands of individual citizens" can be decided, that it is at least doubtful whether a like ruling would have been made had the two cases been considered together, at least
29 as to some of the items set forth in the bill. The facts upon which the court ruled in Mercantile Bank *v.* City of New York are clearly set forth on page 146 of the report in 121 U. S.,

and page 830, 7 Sup. Ct, and it is held that no discrimination existed by reason of the exemption of certain capital from taxation in the State of New York, because, according to subsequent definitions laid down in the decision, it does not constitute "moneyed capital in the hands of individual citizens," within the meaning of the act. Now, in the cases before us, it may be that the allegation that the unassessed capital, being "all the moneyed capital owned by resident individual citizens, and invested in interest-bearing loans, discounts, and securities, except that owned by and invested in incorporated banks," may include capital the exemption of which would create a discrimination as against that of national banks, provided the amount of the exemption was great enough in volume to be considered material. But the difficulty with the complaints is that they are general in their language, and do not set forth with the particularity even of the Boyer case the classes of unassessed moneyed capital with clearness sufficient to enable the court to say that any material quantity of moneyed capital coming into competition with that of national banks has been left unassessed. The only attempts made in the complaints to designate the classes of capital alleged to have been exempted by the assessors is through the allegation that moneyed capital invested in the stocks and bonds of insurance, wharf, and gas companies is not intended to be included in the term "moneyed capital" as used by the pleader. Now, without attempting an analysis, it is clear from the Mercantile Bank case that investments of money can be made in various ways, and even in loans and discounts, without necessarily bringing such investments within the term "moneyed capital," as used in the act of Congress. The conclusion of the whole matter seems to us to lie in the language used by the Supreme Court of the United States in this wise: "The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment." It is moneyed capital of this class, employed in carrying on operations of the same character as those which are within the powers of national banks, which comes into competition with the business of national banks, and such capital, in the hands of individual owners, is what is intended to be described by the act of Congress; and until it appears that there is some considerable amount of moneyed capital of this kind employed in this way, which is exempted by operation of law or by the wilful act of the assessors, a case is not made showing a discrimination against national banks.

30 A further point is made in this case, viz., that the revenue law of 1893 unconditionally repealed the revenue law of 1891, and contains no saving clause covering uncollected taxes on personal property, and that, therefore, the treasurers of the county of King and of the city of Seattle are without power or authority to proceed with the collection of such taxes. It is true that section 137 of the revenue law of 1893 in sweeping terms repeals all acts theretofore enacted providing for the assessment and collection of taxes. The unpaid taxes on real property are clearly saved by the terms of section 136, but, if the taxes on personalty are preserved at all, the saving clause is found in section 75 of the act. It cannot be presumed for a moment that it was the intention of the legislature to release unpaid taxes from so recent an assessment as that of the year 1891, and we think it would be the duty of this court to construe any even doubtful provisions which might be found in the act of 1893 as fairly tending to show an intention on the part of the legislature to preserve the right to collect unpaid taxes, notwithstanding the repeal of all former laws on the subject of taxation. Now, section 75 occurs in the portion of the act which is unquestionably devoted to the future operation of the law, and, with other sections, it lays out a complete scheme for the assessment and collection of taxes on personal property, and, as a finale to the whole, and notwithstanding that the matter contained in section 73 would seem to terminate the power of the treasurer to collect personal taxes after the lapse of a limited period, section 75 seems to continue both the power and duty of the treasurer, and his successors in office, indefinitely, until the taxes have been paid. At the close of this section occur these words: "This section shall apply to all assessment-rolls and the warrants thereto attached, which have been heretofore issued, upon which taxes may be due and unpaid, as well as those hereafter issued,"—which is to say, in the language of the first part of the section, that the "power and duty" to collect any personal-property tax due and unpaid shall continue in and devolve upon the county treasurer, and his successors in office, until the tax is paid. Now, if the power and duty remain with the treasurer, then, notwithstanding the terms of the repealing section, the act of 1891 must be continued in existence so far as may be necessary to the exercise of that power and the performance of that duty, since without the existence of the law the treasurer has neither power to act nor duty to perform. The various sections of the act must be construed together, and harmonized, if possible, so that, if it were impossible to say that this power and duty should continue in the treasurer in view of the positive terms of the repealing section, then, of course, the latter section, being the last in the act, would prevail; but, as it is not unreasonable, both can stand. Taking it all and all, and considering sections 75 and 136, the effect of the repealing section is simply to make the act of 1893 a future revenue law, leaving unpaid taxes under former laws to be collected either as prescribed in those laws or according to the new methods of the later law, when it is so directed. The judgment of the superior court sustaining the demurrers will be affirmed.

Dunbar, C. J., and Hoyt, Scott, and Anders, JJ., concur.

31 In the Supreme Court of the State of Washington.

THE SEATTLE NATIONAL BANK, Appellant,
vs.
THE CITY OF SEATTLE and J. M. E. ATKINSON, as Treas., Respondents.
No. 1288. Judgment.

THURSDAY, *November 22d*, 1894.

This cause having been heretofore submitted to the court on the transcript of the record of the superior court of King county and upon the argument of counsel, and the court having fully considered the same and being fully advised in the premises, and having filed its opinion in writing, it is now, on this 22d day of November, A. D. 1894, on motion of W. T. Scott, Esquire, of counsel for respondent-, considered, adjudged, and decreed that the judgment of the said superior court be, and the same is hereby, affirmed with costs, and that the said The City of Seattle and J. M. E. Atkinson, as treasurer, have and recover of and from the said The Seattle National Bank and from F. L. Fehrens and Robert G. Hooker, sureties, the costs of this action, taxed and allowed at fifty dollars, and that execution issue therefor; and it is further ordered that this cause be remitted to the said superior court for further proceeding in accordance with the opinion herein filed.

Record, vol. 3, page 334.

32 In the Supreme Court of the State of Washington.

THE SEATTLE NATIONAL BANK, Plaintiff, Appellant,
vs.
THE CITY OF SEATTLE and JOHN M. E. Atkinson, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants, Respondents.
No. —. Petition for Writ of Error.

To the honorable the chief justice of the supreme court of the State of Washington:

The petition of The Seattle National Bank, plaintiff and appellant in the above-entitled action, respectfully shows:

That your petitioner is the plaintiff and appellant in the above-entitled action, and that final judgment therein was rendered and filed in this court on the 22nd day of October, 1894, and entered on the 22nd day of November, 1894, in and by which judgment the judgment of the superior court of King county, State of Washington, dismissing the complaint of your petitioner and rendering judgment in favor of the defendants and against your petitioner for costs was affirmed; that said final judgment rendered by this court in said action was greatly to the prejudice and injury of your petitioner; which said judgment and the proceedings leading

thereto are erroneous in many particulars; that in said action there was drawn in question the validity of an act of the legislature of the State of Washington entitled "An act to provide for the assessment and collection of taxes in the State of Washington and
33 declaring an emergency," approved March 7th, 1891; which said act, and especially section 21 thereof, was claimed by your petitioner to be in conflict with and repugnant to section 5219 of the Revised Statutes of the United States, and also to be in conflict with and repugnant to the Constitution of the United States, but the decision and judgment of this court upon said act was in favor of the validity of said act and sustained the validity thereof against the contention of your petitioner; that in said action your petitioner claimed that the provisions of the charter of the city of Seattle adopting said act of the legislature of the State of Washington as a method for the assessment and collection of taxes in said city was repugnant to section 5219 of the Revised Statutes of the United States and to the Constitution of the United States; that the decision of this court was in favor of the said provisions of the charter of the city of Seattle and against the contention of your petitioner; that in said action your petitioner also claimed that the method of the enforcement of the said act of the legislature of the State of Washington for the assessment and collection of taxes in said State was in conflict with said section 5219 of the Revised Statutes of the United States, and that your petitioner and its stockholders were thereby relieved from all taxation under said act of the legislature of the State of Washington and under the laws of the State of Washington, but that this court decided against the claim of your petitioner.

Wherefore, in order that your petitioner may obtain relief in the premises and have opportunity to show the errors complained
34 of, your petitioner prays that it may be allowed a writ of error in said cause, and that a supersedeas in said cause be allowed your petitioner; that said cause be transmitted to the honorable the Supreme Court of the United States, at Washington, to determine said errors, and that proper orders touching the security required of your petitioner may be made.

And your petitioner will, as in duty bound, ever pray, etc.

CARR & PRESTON AND
JAMES B. HOWE,
Attorneys for Plaintiff.

(Indorsed:) No. 1288. Filed Nov. 22, 1894. C. S. Reinhart, clerk.

35 In the Supreme Court of the State of Washington.

THE SEATTLE NATIONAL BANK, Plaintiff, Appellant, *vs.* THE CITY OF SEATTLE and JOHN M. E. Atkinson, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants, Respondents.	No. —. Order Granting Writ of Error.

Now, on this 22nd day of November, 1894, on hearing read the petition of The Seattle National Bank, the plaintiff and appellant in the above-entitled action, praying for the allowance of a writ of error from the Supreme Court of the United States to the supreme court of the State of Washington, and it appearing by said petition and by the record in the above-entitled case that said case is a proper case for the allowance of said writ: now, therefore, it is—

Ordered by the undersigned, the chief justice of the supreme court of the State of Washington, that said writ be, and the same is hereby, allowed, and that the said Seattle National Bank execute to the defendants in said suit its bond, with sureties thereon to be approved by the undersigned, in the sum of one thousand dollars, and said bond when executed and approved by the undersigned shall operate as a supersedeas bond in said action, and thereupon all further proceedings upon the judgment rendered by this court in said action shall be stayed pending the hearing and determination of said writ of error by the United States Supreme Court.

36 Dated this 22nd day of November, 1894.

R. O. DUNBAR,
Chief Justice of the Supreme Court of the State of Washington.

Entered, Journal 3, page 335.

(Indorsed:) No. 1288. Filed Nov. 22, 1894. C. S. Reinhart, clerk

37 In the Supreme Court of the United States.

SEATTLE, NATIONAL BANK, Plaintiff in Error, *vs.* THE CITY OF SEATTLE and J. M. E. ATKINSON, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants in Error.	Assignment of Errors.

Afterwards, to wit, on the 22nd day of November, 1894, comes Seattle National Bank, plaintiff in error, by its attorneys, James B. Howe and Carr & Preston, and says that in the record and proceed-

ing in the above-entitled action there is manifest error in this, to wit:

I.

The superior court of King county erred in refusing to allow the plaintiff, here the plaintiff in error, to introduce evidence in support of the allegations of its complaint; erred in refusing to allow the plaintiff to introduce any evidence whatever; erred in sustaining the objection interposed by the defendants, here the defendants in error, to the introduction of any evidence whatsoever.

II.

The supreme court of the State of Washington erred in affirming the judgment of the said superior court, notwithstanding the aforesaid error of the superior court.

III.

The said superior court erred in sustaining the objection (demurrer *ore tenus*) interposed by the defendants to the complaint.

IV.

38 The said supreme court erred in affirming the judgment of said superior court, notwithstanding the aforesaid error of the superior court in sustaining said objection or demurrer *ore tenus*.

V.

The said superior court erred in rendering judgment of dismissal.

VI.

The said supreme court erred in affirming the said judgment of dismissal of said superior court.

VII.

The said superior and supreme courts erred in deciding that the assessment complained of was not an assessment upon the plaintiff in error of its capital stock *in solido*, and therefore void because in contravention of the provisions of sections 5214 and 5219 of the Revised Statutes of the United States.

VIII.

The said superior and supreme courts erred in deciding that the said assessment and the threatened levy thereunder directly upon the property of the plaintiff was not a taxation of the capital of the plaintiff in error forbidden by the provisions of section 5219 of the Revised Statutes of the United States and also by the provisions of the Constitution of the United States.

IX.

The said superior and supreme courts erred in deciding that the revenue laws of the State of Washington and the charter of
39 the city of Seattle in force at the time of said assessment and levy are not in conflict with the provisions of section 5219 of the Revised Statutes of the United States, and with the provisions of the Constitution of the United States, because a tax upon the capital of the plaintiff in error is thereby expressly required.

X.

The said superior and supreme courts erred in deciding that section 21 of the revenue act of 1891 of the State of Washington (entitled "An act to provide for the assessment and collection of taxes in the State of Washington and declaring an emergency," approved March 9th, 1891) is not in conflict with the provisions of section 5219 of the Revised Statutes of the United States and also with the Constitution of the United States, because a tax upon the capital of the plaintiff in error is thereby expressly required.

XI.

That said superior and supreme courts erred in refusing to hold that the only legislation of the State and city upon the subject of taxation of bank stock or capital being void for the reasons stated in the foregoing assignment No. 10, therefore the shares of the capital stock of the plaintiff in error were exempted from taxation, and the said assessment and threatened levy deprive the plaintiff in error of its property without due process of law.

XII.

The said superior and supreme courts erred in holding that the admitted intentional omission from taxation of six millions
40 of taxable moneyed capital in the hands of individual citizens of the State residing in said city and invested in interest-bearing private loans and securities, to them payable and owing by other citizens of the State residing in the said city out of a total of taxable moneyed capital in the city of $8,300,000.00, was an omission of so material a portion relatively of the whole of such moneyed capital as to create an unequal and unfriendly competition against the plaintiff in error and as to amount to an unfriendly discrimination against the moneyed capital invested in the shares of the capital stock of plaintiff in error, and in not holding that for that reason the tax is void *in toto*.

XIII.

The said superior and supreme courts erred in holding that the revenue laws of the State of Washington (act approved March 9th, 1891, aforesaid) and the city charter contemplated such omission and consequent discrimination and were not invalid for so providing.

XIV.

The said superior and supreme courts erred in refusing to decide that the method of assessment pursued and the resulting discrimination against national-bank shares violated the provisions of sections 1, 2, and 3 of article 7 of the constitution of the State of Washington, and therefore the assessment should be annulled and the levy restrained.

XV.

The said superior and supreme courts erred in not deciding that shares of national-bank stock are not permitted by the
41 provisions of section 5219 of the Revised Statutes of the United States to be taxed by municipal corporations, and therefore the assessment should be annulled and the levy restrained.

Wherefore the said Seattle National Bank, plaintiff in error, prays that the judgment of the said superior and supreme courts of the State of Washington be reversed.

CARR & PRESTON,
JAMES B. HOWE,
Attorneys for the Plaintiff in Error.

(Indorsed:) Filed Nov. 22, 1894. C. S. Reinhart, clerk.

42 In the Supreme Court of the United States.

THE SEATTLE NATIONAL BANK, Plaintiff, Appellant,
vs.
THE CITY OF SEATTLE and JOHN M. E. ATKINSON, as Treasurer and *ex Officio* Tax-collector of said City (Successor in Office of and Substituted in this Action for Adolph Krug), Defendants, Respondents.
} No. —. Bond.

Know all men by these presents that we, The Seattle National Bank of Seattle, in the State of Washington, as principal, and Robert G. Hooker and Geo. R. Carter, as sureties, both of the city of Seattle, in said State of Washington, are held and firmly bound unto the City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, in the full and just sum of one thousand dollars, to be paid to the said City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, their successors and assigns; to which payment, well and truly to be made, we do hereby bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a session of the supreme court of the State of

Washington, in a suit pending in said court between The Seattle National Bank, as plaintiff, and The City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of
43 said city, a final judgment was rendered by said supreme court of the State of Washington against the said plaintiff and in favor of the said defendants, and the said plaintiff having obtained a writ of error and filed the same, together with a copy thereof, in the clerk's office of the said supreme court of the State of Washington to reverse said judgments in the aforesaid suit, and a citation directed to the said City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, citing and admonishing them and each of them to be and appear at the Supreme Court of the United States, to be holden at Washington, on the 21st day of January, 1895:

Now, the condition of the above obligation is such that if The Seattle National Bank aforesaid shall prosecute said writ of error to effect and answer all damages and costs if it fail to make said plea good, then this obligation to be void; else to remain in full force and virtue.

SEATTLE NATIONAL BANK. [SEAL.]
ROBERT G. HOOKER, *Cashier.* [SEAL.]
ROBERT G. HOOKER. [SEAL.]
GEO. R. CARTER. [SEAL.]

Signed, sealed, and delivered in the presence of—

S. FOSTER KELLEY.
W. R. BELL.

44 STATE OF WASHINGTON, } ss:
County of King, }

Geo. R. Carter and Robert G. Hooker, being first duly sworn according to law, on their oaths respectively do say, each for himself, that he is one of the sureties who signed and sealed the within bond; that he is above the age of twenty-one years; that he is a *bona fide* resident of the State of Washington and property-holder therein; that he is neither a counselor nor attorney at law, sheriff of a county, clerk of superior court, nor other officer whatever of any such court, and that he is worth the sum of one thousand dollars in property situated in the State of Washington over and above all his just debts and liabilities whatsoever, exclusive of property exempt from execution.

GEO. R. CARTER.
ROBERT G. HOOKER.

Subscribed and sworn to before me this 22nd day of November, 1894.

[NOTARIAL SEAL.] W. R. BELL,
Notary Public in and for the State of Washington, Residing at Seattle, in said State.

The foregoing bond and the sufficiency of the sureties thereon taken and approved by me this 22nd day of November, 1894.

R. O. DUNBAR,
Chief Justice of the Supreme Court
of the State of Washington.

(Indorsed:) No. 1288. Filed Nov. 22, 1894. C. S. Reinhart, clerk.

45 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the honorable the justices of the supreme court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Washington, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between The Seattle National Bank, appellant and plaintiff in said court and plaintiff in error in this court, and The City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, defendants and respondents in said court and defendants in error in this court, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of The Seattle National Bank, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 21st day of January, 1895, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further
46 to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said

Supreme Court, the 22nd day of November, in the year of our Lord one thousand eight hundred and ninety-four.

A. REEVES AYRES,
Clerk of the Circuit Court of the United States
for the District of Washington.
R. M. HOPKINS, *Deputy.*

{ Seal United States Circuit Court, District }
{ of Washington, Northern Division. }

Allowed by—
R. O. DUNBAR,
Chief Justice of the Supreme Court
of the State of Washington.

[Endorsed:] 1288. In the Supreme Court of the United States. The Seattle National Bank, plaintiff in error, *vs.* The City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city (successor in office of and substituted in this action for Adolph Krug), defendants in error. Writ of error. Filed Nov. 22, 1894. C. S. Reinhart, clerk.

47 UNITED STATES OF AMERICA, *ss:*

To the City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city, and each of you, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, at Washington, on the 21st day of January, 1895, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Washington, wherein The Seattle National Bank is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22nd day of November, 1894.

[Seal of the Supreme Court, State of Washington.]

R. O. DUNBAR,
Chief Justice of the Supreme Court
of the State of Washington.

Attest my hand and seal of said court this Nov. 22d, 1894.
C. S. REINHART, *Clerk.*

47½ Received, this 23rd day of November, 1894, a copy of the within citation, and service of the within citation upon the defendants in error is this day acknowledged.

W. T. SCOTT AND
FRANK A. STEELE,
Attorneys for the Defendants in Error.

[Endorsed:] 1288. In the Supreme Court of the United States. The Seattle National Bank, plaintiff in error, *vs.* The City of Seattle and John M. E. Atkinson, as treasurer and *ex officio* tax-collector of said city (successor in office of and substituted in this action for Adolph Krug), defendants in error. Citation. Filed Nov. 26, 1894. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

48 In the Supreme Court of the State of Washington.

STATE OF WASHINGTON, } ss:
County of Thurston, }

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record in the above-entitled cause, and I further certify that in pursuance of the writ of error filed herein I herewith transmit said record to the United States Supreme Court, together with the original writ of error and citation issued herein.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 18th day of January, 1895.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

Endorsed on cover: Case No. 15,790. Washington supreme court. Term No., 224. The Seattle National Bank of Seattle, plaintiff in error, *vs.* The City of Seattle and John M. E. Atkinson, as treasurer & *ex officio* tax-collector of said city. Filed February 14th, 1895.

166463

Supreme Court, U. S.
FILED.
DEC 28 1896
JAMES H. McKENNEY,
CLERK.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM. 1896.

No. 224.

THE SEATTLE NATIONAL BANK OF SEATTLE,
PLAINTIFF IN ERROR,

VS.

THE CITY OF SEATTLE AND JOHN M. E. ATKINSON,
AS TREASURER AND EX-OFFICIO TAX COLLECTOR OF SAID CITY, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

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Lowman & Hanford Stationery & Printing Co., Seattle.

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STATEMENT.

The plaintiff in error, a national bank located in the City of Seattle, in the County of King, State of Washington, instituted this action in the Superior Court of said county to enjoin the city and its treasurer and ex-officio collector of taxes from levying upon the goods and chattels of the bank, in order to satisfy a tax assessed upon the capital of the bank, which assessment plaintiff alleged was void because forbidden by the Constitution of the United States and the provisions of Sections 5214 and 5219 of the Revised Statutes of the United States. It appears from the complaint that not only was the assessment *in solido* to the plaintiff as owner of all of the shares of the capital stock of the plaintiff, but also that the taxation

thereof was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State of Washington. Folios 1–9. The defendants filed their amended answer, joining issue upon certain allegations of the complaint and admitting others. Folios 10–14. The plaintiff replied, admitting certain of the new matter alleged in the amended answer and denying other. Folios 15–16. The defendants objected to the reception of any evidence in support of the complaint on the ground that the complaint did not state facts sufficient to constitute a cause of action against the defendants or either of them, and the court sustained the objection, the plaintiff excepting, and, the plaintiff electing to stand upon its complaint, the court rendered judgment of dismissal. Folios 17-18. Also folios 23-24-25. The plaintiff appealed from said decree to the Supreme Court of the State of Washington, which court affirmed the decree appealed from, on the ground that the laws of the state, under which the taxation was justified, and the acts of the taxing officers complained of, were not repugnant to any provisions of the Constitution of the United States or to Sections 5214 and 5219 of the Revised Statutes of the United States. (Opinion of Court, folios 30-36.)

The plaintiff thereupon sued out a writ of error from this court which was allowed by the Chief Justice of the State, and was duly served. Folios 37 39-45-51 and 52. A citation was duly issued and served. Folios 53-54. The plaintiff in error filed its assignment of errors specifying the errors claimed by it to have been committed by the Supreme Court of the State. Folios 40-44.

The errors assigned in the assignment of errors may be condensed, and so condensed the plaintiff in error relies upon the following specified errors for reversal of the judgment of the Supreme Court of the State:

I.

That Section 21 of the Revenue Law of the State of Washington, approved March 9, 1891, entitled, "An act to provide for the assessment and collection of taxes in the State of Wash-

ington, and declaring an emergency," under which, by virtue of the City Charter, the capital stock of the plaintiff in error was assessed and taxed, was and is in conflict with the Constitution of the United States, and with Sections 5214 and 5219 of the Revised Statutes of the United States, and the Supreme Court of the State of Washington erred in not so holding.

II.

That the assessment complained of by the plaintiff in error was an assessment *in solido* to the plaintiff in error as the owner of the whole number of shares of its capital stock, and amounted to the assessment and taxation of the capital of the plaintiff in error, and was in contravention of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States, and the Supreme Court of the State of Washington erred in not so holding.

III.

That the Supreme Court of the State of Washington erred in not holding that the taxation of the shares of the capital stock of the plaintiff was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State of Washington taxable by the city, and therefore conflicted with Section 5219 of the Revised Statutes of the United States.

IV.

That the Supreme Court of the State of Washington erred in not holding that the intentional omission from taxation by the city of $6,282,000 of competing moneyed capital in the hands of individual citizens, taxable in the city, out of a total of such moneyed capital of $8,300,000, accompanied by the assessment of the national bank stock in the city at $266,000 (or 18 per cent.) in excess of capitalization, and of the state bank stock in the city at $282,000 (or 35 per cent.) less than capitalization, was an intentional omission from taxation of so large a part relatively of the entire moneyed capital in the hands of individual citizens and properly taxable, as to amount

to a discrimination against the shares of stock of the plaintiff in error, and a willful violation of the provisions of said Section 5219 of the Revised Statutes of the United States.

V.

That the Supreme Court of the State of Washington erred in not holding that the allegations of the complaint, being admitted by the demurrer, showed a plain and clear case of the violation of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States, by the taxing officers of the City of Seattle, whereby the plaintiff in error and its stockholders were deprived of the equal protection of the law, and of their property without due process of law, and of the protection of sections 5214 and 5219 of the Revised Statutes of the United States.

VI.

The said Superior and Supreme Courts erred in not deciding that shares of national bank stock are not permitted by the provisions of Section 5219 of the Revised Statutes of the United States to be taxed by a municipal corporation.

ARGUMENT.

Error No. 1.

The Supreme Court of the State of Washington erred in holding that the plaintiff's complaint did not show that the plaintiff's capital had been taxed in violation of the Constitution of the United States and of Sections 5214 and 5219 of the Revised Statutes of the United States.

The assessment in the case at bar was made under Section 15 of Article 9 of the Freeholder's Charter of the City of Seattle, and under Section 21 of an Act of the Legislature of the State of Washington, entitled, "An act to provide for the assessment and collection of taxes in the State of Washington, and declaring an emergency," approved March 9, 1891. Laws of Washington, 1891, pp. 280-289.

Said section of the Charter is as follows:

"Section 15. Except as in this charter otherwise provided, the assessment of property taxable in the city for municipal purposes, the equalization of assessments and collection of taxes, and the sale of property for unpaid taxes, and the redemption of property sold for taxes, shall be made in the same manner and with like effect as now, or as may be provided hereafter by law for the assessment of property, equalization of assessment, levy, collection of taxes, and sale of property for unpaid taxes for state or county purposes, and redemption thereof; and all provisions of law applicable to such assessments, equalization, levy, collection and sale for state and county purposes are hereby applied to and shall be the law governing such assessments, equalization, levy, collection and sale for municipal purposes; and the respective officers of the city shall have, possess and perform the same powers and duties, in all matters concerning revenue and taxation for municipal purposes, as are or may be by law conferred or imposed upon county officers in matters concerning revenue and taxation for state and County purposes, and to that end—

First—All powers and duties so by law conferred or imposed upon county assessors are hereby imposed or conferred upon the city assessor.

Second—All powers and duties so by law conferred or imposed upon the board of county commissioners are hereby conferred upon and imposed upon the city council and its constituted committees.

Third—All powers and duties so by law conferred or imposed upon the county attorney are hereby conferred and imposed upon the corporation counsel.

Fourth—All powers and duties so by law conferred or imposed upon the county treasurer as tax collector are hereby imposed and conferred upon the city treasurer as city tax collector.

Fifth—All powers and duties so by law conferred and imposed upon the county treasurer are hereby conferred and imposed upon the county clerk and county auditor respectively, are hereby conferred and imposed upon the city clerk and city comptroller respectively."

Said Section 21 of the Act is as follows:

"Section 21. Every individual, firm, corporation or association of persons, carrying on a general banking business in this state, whether the same has been organized under the

banking laws of this state or of the United States, or conducted under the style of private bankers, shall be assessed and taxed in the county, town, city or village where such bank or banking association is located and not elsewhere, in the following manner: Annually, at such times as provided for listing property for taxation, every such bank or banking association as contemplated in this section shall, by its accounting officer, furnish the county or city assessor a statement, verified by oath, giving the amount of paid-up capital stock, the amount of surplus or reserve fund and the amount of undivided profits of such bank or banking association. The aggregate amount of capital, surplus, and undivided profits shall be assessed and taxed as other like property in the state is assessed and taxed: Provided, at the time of listing the capital stock, the amount and description of its legally authorized investments in real estate shall be assessed and taxed as other real estate is assessed and taxed under this act, and the assessor shall deduct the amount of such investments in real estate from the aggregate amount of such capital, surplus, and undivided profits, and the remainder then taxed as above provided."

The statute is plain, and there is no room for construction. It would be difficult to use any other language than that used to convey the idea that the thing to be assessed and taxed was the capital of the bank.

Van Allen vs. Assessors, 3 Wall. 573.
Bradley vs. People, 4 Wall. 459.
National Bank vs. Commonwealth, 9 Wall. 353.

Section 23 of said Act of the Legislature is as follows:

"Each bank and banking association shall be liable to pay any taxes assessed against them as the agent of each of its shareholders, owners or owner under the provisions of this act, and may pay the same out of their undivided profit account or charge the same to their expense account, or to the accounts of such shareholders, owners or owner in proportion to their ownership."

The aforesaid revenue act in seeking to impose a tax upon the capital of the bank, in terms exempted from taxation the shares of the capital stock of the bank.

Section 8 of the Act is as follows:

"Section 8. Personal property shall be listed in the manner following: First, every person of full age and sound mind, being a resident of this state, shall list all his moneys, bonds or stock, shares of stock of joint stock or other companies (when the property of such company is not assessed in the state), franchises, royalties and other personal property; second, he shall also list separately, and in the name of his principal, all moneys deposited subject to his order; third, the property of a minor child shall be listed by his guardian or by the person having such property in charge; fourth, the property of an idiot or lunatic, by the person having charge of such property; fifth, the property of a person for whose benefit it is held in trust by the trustee of the estate of the deceased person, or by the executor or administrator; sixth, the property of corporations whose assets are in the hands of receivers, by such receivers or their agents; seventh, the property of a body politic or corporate, by the president or proper agent or officer thereof; eighth, the property of a firm or company, by a partner or agent thereof; ninth, money and property in litigation, in possession of any county officer must be assessed to the custodian thereof, and the taxes thereon paid by the custodian thereof under the direction of the court."

So far as Section 23 of the Revenue Act of 1891 requires the bank to pay the tax and charge the same to its expense account, the tax is a direct tax upon the bank itself.

City of Boston vs. Beal, 51 Federal Reporter, 306.
Affirmed, 55 Federal Reporter, 26.

So far as said Section 23 of the said Revenue Act requires the bank to either pay the tax out of undivided profit account or charge the same to expense account or to stockholders, the liability to pay (as construed by the taxing officers in this case by their acts, and by the State Court) is absolute and immediate without regard to ability to pay, existence of undivided profits, or condition of accounts of stockholders.

Therefore the tax is a tax upon the bank.

It is respectfully submitted that Section 23 does nothing more than provide a method for the collection, while Section 21 is the only authority for the assessment of the tax.

That a lawful provision for collecting a tax cannot impart validity to an unlawful provision for its assessment, seems too clear for argument; yet the Supreme Court of the State seems to confound the method of collection with the power to assess, and holds that the end justifies the means.

ERROR No. 2.

The assessment complained of by the plaintiff in said action was an assessment in solido to the plaintiff as the owner of the whole number of the shares of its capital stock, and amounted to an assessment and taxation of the capital of the plaintiff, and was in contravention of the Constitution of the United States, and of Sections 5214 and 5219 of the Revised Statutes of the United States, and the Supreme Court of the State of Washington erred in not so holding.

Such an assessment and levy is in violation of and is forbidden by the provisions of the Act of Congress permitting an assessment by the State of the shares of national banks to the individual owners thereof, and is therefore void.

Revised Statutes of the United States, Section 5219.

National banks may be taxed by the State only to the extent granted by the permissive provisions of said section 5219.

Covington City National Bank vs. City of Covington, et al., 21 Federal Reporter, 484.

Osborn vs. U. S. Bank, 9 Wheaton, 738.

The proprietary interest of the individual in shares of the stock of a national bank is subject to taxation by the State only to the extent granted by the permissive provisions of said section.

Mercantile National Bank vs. City of New York, 28 Fed. Rep. 776.

People vs. Weaver, 100 U. S. Reports, 539-543.

Boyer vs. Boyer, 113 U. S. 689.

Wasson vs. First National Bank, 107 Ind. 206.

Maguire vs. Board of Revenue, 71 Ala. 401.

The assessment and the taxation of all the shares of the stock of a national bank *in solido* to the bank direct, as owner thereof, constituted a tax upon the bank forbidden by said Section 5219 and rendered void thereby.

First National Bank of Richmond vs. City of Richmond et al., 39 Fed. Rep. 309.

National Bank of Virginia vs. City of Richmond et al., 42 Fed. Rep. 877.

First National Bank of Leoti vs. Fisher, 45 Kansas, 726.

Collins vs. Chicago, 4 Bissell, 472.

Miller vs. First National Bank, 46 Ohio St. 424.

In the case last cited, the invalidity of such a form of taxation was clearly pointed out. In that case the court said:

"As regards the bank, there is but one question in the case that needs to be determined,—for the determination of it will dispose of all the others that have been raised—that is, whether the shares of stock in a national bank are to be listed for taxation in the names of the shareholders or in the name of the bank. The power of a state to impose any tax upon such shares is conferred by the statutes of the United States,—Section 5219, Revised Statutes. This is not controverted. It is also true that the property of a national bank, other than its realty, cannot be subjected to taxation by a state or any of its subdivisions. The power conferred by the section just referred to, is to include the 'shares' in the valuation of the personal property of the 'owner' or 'holder' of such shares. The bank does not own the shares of its capital. It owns the capital and the shares are owned by its shareholders. The capital is corporate property; the shares in it are the individual property of its shareholders. It is the latter that may be taxed, and not the former. No authority is conferred to assess them for taxation against the bank itself; and, to so assess them, would be but another form of taxing the capital of the bank itself, which no one contends could be done, without the authority of Congress. A share in a bank is but a fractional part of its capital owned by one who contributed an equivalent part of the capital, or his transferee; and the aggregate of all the shares held by individuals in a bank is equal to the aggregate of the capital; so that, if all the shares in a bank were assessed for taxation in its name, and payment of a tax required of it, the effect

would be precisely the same as a tax upon the aggregate capital of the bank. Again, as the shares are to be assessed for taxation according to their true value in money, a tax so levied would extend to and include all the property of the bank, its personalty, in the valuation placed on the shares in its capital stock, and its realty, under the exception contained in Section 5219, Revised Statutes of the United States. It seems, then, to follow, as a necessary result, that shares in a national bank must be assessed for taxation in the names of the owners of them, and not in the name of the bank itself. The language of the statute under which the power is conferred on a state to tax such shares is such; and the power conferred must be confined to the language; or the exemption of the bank itself from taxation may be reduced to an empty expression."

The case of Bank vs Commonwealth, 9 Wallace, 353, does not support the decision of the Supreme Court of the State in this case.

An examination of that case will show that it has no application to the case at bar. In that case it was sought to hold the bank liable for a tax assessed upon the shares of its stockholders, but which assessment had been made against the stockholders. In the case at bar the assessment was made directly to the bank and not to the stockholders. In the case cited suit was brought against the bank and this court held that the suit was in the nature of a garnishment proceeding.

In the case at bar the bank was not sued at all. The collector of taxes was about to levy upon the property of the bank before obtaining judgment against the bank, and without regard to the question of the indebtedness of the bank to its shareholders.

The distinction between the two cases is clearly pointed out in the case of

Hershire vs. First Nat. Bank, 35 Iowa, 272.

ERRORS NOS. 3, 4 AND 5.

The Supreme Court of the State erred in not holding that the complaint showed that the taxation of the shares of capital stock of the plaintiff was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State, resident and taxable in the City, and therefore was void under Section 5219 of the Revised Statutes of the United States.

The total moneyed capital owned by residents of the City on April 1st, 1891, invested there in loans at interest and in interest bearing notes and securities, exclusive of that invested in shares of stock of national banks and banks incorporated under the laws of the State, was $6,000,000. Folio 6. The total capitalization of national banks in the city was then $1,500,000 and that of state banks $800,000. The national banks were assessed at a minimum of $1,766,000, or an increase (approximately) of 18 per cent. over their total capitalization. The state banks were assessed $518,-080, or a decrease (approximately) of 35 per cent. of their total capitalization. All of this $6,000,000 of moneyed capital invested in loans at interest and in interest bearing notes and securities, was purposely omitted from taxation by the taxing officers (Folios 6-7), and the omission was in pursuance of a pre-arranged scheme between the several taxing officers throughout the State, to which the City and its taxing officers became parties. This "other moneyed capital" was "in the hands of individual citizens of the State" and was taxable. Folios 6-7. The borrowers and payors were likewise residents of the City.

The following table condenses the figures above given, to-wit:

National bank capitalization	$ 1,500,000 00
State bank Capitalization	800,000 00
In the hands of resident individual citizens, omitted	6,000,000 00
Total taxable moneyed capital	$ 8,300,000 00

The assessment thereof was as follows:

National bank stock	$ 1,766,000 00
All other moneyed capital	518,080 00
Total assessment	$ 2,284,080 00

It will be seen, therefore, that while the shares in national banks in the city were assessed at an average of 18 per cent. above par, the shares of banks organized under the laws of the State were assessed at 35 per cent. below par; while $6,000,000 of similar moneyed capital in the hands of individual citizens, or 75 per cent. of the total moneyed capital in the City, was designedly omitted from taxation.

It cannot be doubted from the foregoing statement, that the withdrawal from taxation of 75 per cent. of the total moneyed capital in the hands of individual citizens in the city, had the effect of taxing national bank shares at a greater rate than the remaining moneyed capital in the hands of individual citizens was taxed.

In this connection it is proper to call attention to the important fact that this omitted moneyed capital was taxable. (Paragraph XIX of the complaint). The levy was at the rate of four and one-half ($4\frac{1}{2}$) mills on each dollar of valuation. It seems clear that if the $6,000,000.00 of omitted taxable capital had not been omitted, the rate of levy upon bank stock as well as other taxable property would have been lowered. But the forbidden discrimination resulted particularly from imposing a rate of four and one half mills upon national bank stock and no rate at all upon the $6,000,000.00 of omitted competing capital. It seems too plain to admit of argument, that the omission of $6,000,000.00 out of a total of $8,000,000.00 of taxable moneyed capital is an unlawful discrimination against the moneyed capital that is taxed.

It cannot be gathered from the opinion of the Supreme Court of the State whether it considers the missing allegations to be those which should go to show that the class of moneyed capital omitted is such as comes in competition with national

banks, or such as would go to show that the amount thereof is considerable in relation to the total of such capital in existence, or, whether the court was unable to find either of these necessary facts sufficiently alleged.

The embarrassment of the Supreme Court of the State in this connection is nowhere more pointedly evidenced than in the communication subsequently addressed by the Supreme Court, in compliance with the mandate of the State Constitution, to the Governor of the state, calling his attention to apparent defects in the laws of the state, wherein this language is used:

"Twice this Court has been called upon to review cases involving the assessment of the stock of national banks for taxation. The First National Bank of Aberdeen vs. The County of Chehalis, 6 Washington, 64; Washington National Bank vs. The County of King, decided October 22, 1894. In both cases the assessments were upheld, but in both, the decision was arrived at only upon a construction of the law which was not satisfactory to this Court, to say the least. These cases have been appealed to the Supreme Court of the United States, and it is not at all beyond the bounds of possibility that that tribunal may come to a different conclusion. The trouble with the statute upon this subject is, that it is obscure, involved and uncertain, and there is great danger that unless it is revised, there will come a time when the State will be practically without a law for the proper taxation of the property of banks and other financial institutions and particularly national banks. A careful revision of this subject should be made, with a special view to the avoidance of double taxation and in the light of the experience of other states, to the end that this vexed question may be set at rest."

Public Documents, State of Washington, 1894–5, Report of Supreme Court, paragraph 6, pp. 6–7.

These facts certainly appear from the complaint: The omitted capital—

1. Was moneyed capital;
2. Was taxable;
3. Was not invested in bank stock;

4. Was owned by individual citizens who resided in the city;

5. Was loaned at interest;

6. Was loaned to other individual resident citizens;

7. Was invested in interest bearing loans and securities; therefore excluded from consideration the accounts denominated by the Supreme Court, in its opinion in First National Bank of Aberdeen vs. County of Chehalis, as *mere debts;* excluded store bills, demands for torts committed, capital invested in shares of stock of incorporated bodies of all kinds, not competing.

8. Formed a very material point relatively (75 per cent.) of the total moneyed capital in the hands of individual citizens within the jurisdiction levying the tax upon the shares of the plaintiff.

The Supreme Court of the State in considering the allegations of the complaint, applied a very different rule of law in testing the sufficiency of the complaint from that which in Holland vs. Isaacs, 4 Wash. 54, it announced to be the correct one:

"As to the rule of construction to be recognized, Section 94 (Code) provides that: In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed. All prior forms of pleading were abolished by the Code and it prescribed what they should be thereafter and also the rule by which their sufficiency should be determined.

In Chambers vs. Hoover, 3 Wash. Ter. 110, speaking of the complaint in that case, to which a demurrer had been interposed, Turner, J., says:

"'The averments of this pleading are vague and indefinite and it is defective in other respects, yet when bolstered by the rule of liberal construction commanded by the code, we think we discern a cause of action. A suitor is no longer to be turned out of court if by making all reasonable intendments in his favor, enough can be seized hold of in his pleadings to show that he has rights which ought to be enforced. He may be required on motion to conform his statements to the rules of good pleading, and if he refuse, may be turned out of court, but as against a demurrer, the office of which is to raise a substantial issue on the law of the case and not on the law of

practice and pleading, evidentiary facts and even inferences from averments amounting to mere conclusions of law, will be considered in his favor.' * * *

"Under our practice, the old rule that the pleading must be most strongly construed against the pleader is not recognized. It must be liberally construed with an aim to arrive at substantial justice between the parties."

It is respectfully submitted, however, that the plaintiff in error is not, in order to obtain a reversal of the judgment of the Supreme Court of the State, compelled to invoke the liberal rule of pleading formerly announced by that court.

It is confidently asserted that tested by the rule established by this Court in Boyer vs. Boyer, 113 U. S. 689, and Mercantile Bank vs. New York, 121 U. S. 138, the complaint is sufficient to require an answer from the defendants.

A comparison of the language of the complaint with that of the opinion in the case last cited, will convince the Court that the confidence above expressed is fully warranted.

COMPLAINT.	OPINION OF THIS COURT.
That on the 1st day of April, 1891, there existed in the said City of Seattle, State of Washington, taxable moneyed capital (other than and beyond that invested in shares of stock of national banks and beyond that invested in incorporated banks) owned by individual citizens of said state resident in said city, and there invested in interest-bearing loans and securities to them payable and owing by other citizens of said state residing in said city, of vast amount, to-wit, exceeding the sum of six million dollars.—Paragraph 13, Folio 5.	"The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed, is invested for that purpose in securities, by way of loan, discount or otherwise, which are, from time to time, according to the rules of the business, reduced again to money and re-invested. It includes money, in the hands of individuals, employed in a similar way, invested in loans
That on the said first day of April the total capitalization	

of national banks located in the said City of Seattle was the sum of one and one-half millions of dollars; that the total capitalization of banks there located, but incorporated under the laws of the State of Washington, was the sum of eight hundred thousand dollars, and that at the same time large amounts of moneyed capital were invested in the City of Seattle by residents of said city in the stocks and bonds of insurance, wharf and gas companies, and in addition to the foregoing there then existed in said city other moneyed capital amounting to at least six million dollars, being the other moneyed capital hereinbefore referred to; that in no case as plaintiff is informed and believes, is the stock of any national bank or of shares of stock of any national bank located in the City of Seattle, valued for assessment at a less sum or assessed upon a valuation of less than the par value thereof; and, further, that the total assessment and total valuation in the assessment made by the City of Seattle throughout the said City of Seattle for the year 1891, of and upon the capital stock, bonds and shares of banks, banking corporations, insurance, gas, and wharf corporations was the sum of $2,284,080.00, of which the sum of $1,766,000.00 was upon and of the stock of national banks or in securities for the payment of money, either as an investment of a permanent character, or temporarily, with a view to sale or repayment or re-investment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."

Mercantile Bank vs. New York, 121 U. S. 138.

in said City of Seattle located. —Paragraph 14. Folios 5–6.

That all of said other moneyed capital referred to in the foregoing paragraph hereof numbered XIII, the same being all the moneyed capital in the city owned by resident individual citizens and invested, as aforesaid, in interest-bearing loans, discounts and securities, except that owned by and invested in incorporated banks located in the city, was purposely omitted from assessment and from taxation whatever by said city assessor and other taxing officers of the defendant city, and the same and the whole thereof have escaped taxation.—Paragraph 17, Folios 6–7.

It is apparent that the language of the complaint is identical with that found in the foregoing extract from the opinion of this Court.

The bill of complaint in the case of the Puget Sound National Bank of Seattle vs. King County *et al.*, 57 Federal Reporter, page 433, is practically identical with the language of the complaint in the case at bar. The Circuit Court of the District of Washington in overruling the demurrer to that bill, said:

"The bill does explicitly set forth the fact and the manner of discrimination against shareholders of national bank stock in the valuation thereof for assessment as compared with the assessment for the same year, of other moneyed capital in the hands of individual citizens of this state, and invested in this state, so as to make a profit from the use thereof as money."

* * * * * * *

"It is true that the bill in this case does not particularize the discriminations complained of or specify instances with any greater minuteness than the bill in the case of the First National Bank of Aberdeen vs. County of Chehalis, in which

the Supreme Court of this State affirmed a judgment in favor of the defendant upon a demurrer to the bill. But it is also true that the bill before me is fully as definite and specific in its statement of the facts constituting discriminations as the bill in the case of Boyer vs. Boyer, *supra*, in which the Supreme Court of the United States held that an answer should have been required, and reversed the decision of the Supreme Court of Pennsylvania sustaining a demurrer to the bill."

That the moneyed capital omitted from taxation was other moneyed capital in the hands of individual citizens, within the meaning of Section 5219 of the Revised Statutes of the United States, is clear.

Mercantile Bank vs. New York, 121 U. S. 138.
Boyer vs. Boyer, 113 U. S. 689.
Talbott vs. Board of Commissioners, 139 U. S. 438.
Wasson vs. First Nat. Bank, 107 Ind 206.
Maguire vs. Board of Revenue, 71 Ala. 401.

That such omission resulted in the taxation of the shares in national banks at a rate greater than that imposed on other moneyed capital in the hands of individual citizens, is equally clear. This discrimination against shares in national banks violated Section 5219 of the Revised Statutes of the United States, and rendered the assessment void.

Boyer vs. Boyer, supra.
Mercantile Bank vs. New York, supra.
Supervisors vs. Stanley, 105 U. S. 317-318.
Pelton vs. National Bank, 101 U. S. 143.
Cummings vs. National Bank, 101 U. S. 153.
First National Bank vs. Lindsley, 45 Fed. Rep. 620.
Wasson vs. First National Bank, supra.
Puget Sound National Bank vs. King County, 57 Fed. Rep. 433.

The omission of the above amount of moneyed capital in the hands of individual citizens from assessment was premeditated and was the result of an agreement between the county assessors throughout the state, in which the assessing officers of the city joined. Folio 10.

The tax to complainant was therefore void.

Andrews vs. King County, 1 Wash. 46.

This would be true even though the revenue law of this state forbade such omissions.

First National Bank of Toledo vs. Treasurer, 25 Fed. Rep. 749.
Yick Wo vs. Hopkins, 118 U. S. 356.

In concluding the discussion upon this proposition, the facts alleged in Paragraph 19 of the complaint are peculiarly pertinent. It appears therefrom that the omission worked the forbidden discrimination and necessarily increased the rate of taxation upon the shares of the plaintiff's capital stock, all of which was well known and most wrongfully intended by the taxing officers.

ERROR NO. 6.

The permissive provisions of Section 5219 are not sufficiently broad to allow the taxation of the shares of stock of national banks by municipal corporations.

First National Bank of Richmond vs. City of Richmond et al., 39 Federal Reporter, 309.

* * * * * * *

In conclusion it is submitted that no question has been made but that the remedy by which the plaintiff sought to obtain redress is the proper one. A suit in equity by the bank praying an injunction to restrain the collection of a tax and seeking a decree annulling the assessment, was the proper remedy in the case.

Cummings vs. National Bank, 101 U. S. 153.
Andrews vs. King County, 1 Wash. 46 (in which Cummings vs. National Bank is cited with express approval).
Hills vs. Exchange Bank, 105 U. S. 319 (affirming on this point, 5 Fed. 253).
Covington City National Bank vs. City of Covington, 21 Fed. 484.
First National Bank of Toledo vs. Treasurer, 25 Fed. Rep. 749.

First National Bank vs. City of Richmond, 39 Fed. Rep. 309.
National Bank vs. Kimball, 103 U. S. Rep. 732.
Virginia Coupon Cases, 114 U. S. Rep. 316.
Lenawee Co. Savings Bank vs. City of Adrian, 66 Mich. 273.
Osborne vs. Bank, 9 Wheaton, 739.
Howell vs. City of Tacoma, 3 Washington, 711.

* * * * * * *

It is respectfully submitted that the judgment of the Supreme Court of the State of Washington should be reversed, and that that court should be instructed to reverse the judgment of the Superior Court of King County, State of Washington, sustaining the demurrer *ore tenus* of the defendants to the plaintiff's complaint.

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166-463

IN THE

Supreme Court of the United States

OCTOBER TERM, 1903.

No. 224.

THE SEATTLE NATIONAL BANK OF SEATTLE,
PLAINTIFF IN ERROR.

vs.

THE CITY OF SEATTLE, AND JOHN M. E. ATKINSON,
AS TREASURER AND EX-OFFICIO TAX COLLECTOR OF SAID
CITY, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF DEFENDANTS IN ERROR.

JOHN B. ALLEN,
JOHN K. BROWN,
F. H. TIPTON,
Counsel for Defendants in Error.

First National Bank vs. City of Richmond, 39 Fed. Rep. 309.

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166-463

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BRIEF OF DEFENDANTS IN ERROR.

STATEMENT.

The complaint of the plaintiff in error, being the plaintiff in the original cause, alleges in effect that 2500 shares of the capital stock of the plaintiff in error, being the whole number of its shares, were assessed on April 1, 1891, *in solido* to plaintiff in error as owner thereof at $100.00 per share, and the tax levied accordingly. That at that time in the city of Seattle there was moneyed capital owned by individual citizens of the state of Washington, being residents of said city, and there invested in interest bearing loans, discounts and securities owing by other citizens of said state being residents of said city in an amount exceeding six million dollars; that this moneyed capital of the city of Seattle was omitted from assessment by

reason of the concerted action of the county assessors of the state pursuant to the advice of the attorney general of the state, which agreement was adopted by the assessor of said city; that the capitalization of the national banks located in said city then amounted to $1,500,000, and of incorporated state banks there located to $800,000; that in addition to said $6,000,000.00 large sums (the amount thereof not being stated) were invested in said city by residents thereof in stocks and bonds of insurance, wharf and gas companies. That in no case was the stock or shares of stock of any national bank located in said city assessed for taxation at less than its par value; that the total assessed valuation put by said city upon all stocks and bonds mentioned and upon the capital stocks, bonds and shares of banks and banking corporations for the year 1891 was $2,284,000.00, of which $1,766,000.00 was the valuation put upon the stock of national banks located in said city.

Plaintiff in error further alleges that its capital, surplus and undivided profits were invested partly in United States bonds, and the remainder in loans to residents of the state of Washington.

It avers that the treasurer of the city of Seattle is about to distrain its property to secure said tax. It claims that the tax *in solido* is unlawful in method and that the omissions referred to effected a discrimination against the shares of plaintiff in error as a national bank forbidden by Sections 5214 and 5219 U. S. R. S.

Without tendering or offering to pay the amount of tax plaintiff in error ought to pay, it prays for an injunction against the collection of the tax.

Upon the case coming on for trial in the Superior Court of King County defendants objected to the introduction of any evidence on the part of plaintiff on the ground that the complaint did not state facts sufficient to constitute a cause of action. The court sustained the objection and rendered judgment of dismissal.

Thereupon plaintiff in error appealed to the Supreme Court of the State, which affirmed the judgment of the court below. From this judgment of affirmance this writ of error is prosecuted.

The statutes pursuant to which the tax in question was levied are Sections 21 and 23, ch. 140, Laws of Washington of 1891, pp. 289 and 290, and are as follows:

"Section 21. Every individual, firm, corporation or association of persons, carrying on a general banking business in this state, whether the same has been organized under the banking laws of this state or the United States, or conducted under the style of private bankers, shall be assessed and taxed in the county, town, city or village where such bank or banking association is located and not elsewhere, in the following manner: Annually, at such times as provided for listing property for taxation, every such bank or banking association as contemplated in this section shall, by its accounting officer, furnish the county or city assessor a statement, verified by oath, giving the amount of paid-up capital stock, the amount of surplus or reserve fund and the amount of undivided profits of such bank or banking association. The aggregate amount of capital, surplus, and undivided profits shall be assessed and taxed as other like property in the state is assessed and taxed: Provided, at the time of listing the capital stock, the amount and description of its legally authorized investments in real estate shall be assessed and taxed under this act, and the assessor shall deduct the amount of such investments in real estate from the aggregate amount of such capital, surplus, and undivided profits, and the remainder then taxed as above provided."

"Sec. 23. Each bank and banking association shall be liable to pay any taxes assessed against them as the agent of each of its shareholders, owners or owner under the provisions of this act, and may pay the same out of their undivided profit account or charge the same to their expense account, or to the accounts of such shareholders, owners or owner in proportion to their ownership."

Section 18 of Article 9 of the City Charter of the City of Seattle, in force at the time the assessment was made, reads as follows:

"SEC. 18. A committee of the city council selected as in this charter provided, shall constitute a board of equalization, and shall on the first Monday in August, after the assessor shall have completed and handed in his assessment roll to the city clerk, and after five days' notice published in the city official newspapers, meet to hear and determine all complaints respecting the valuation of property as fixed by the assessor in such roll; provided, however, that before raising an assessment the board shall notify the person interested, by letter or express, post prepaid, and addressed to such place at least three days before action is taken, of the day fixed for the matter to be investigated. Any member of the said board shall have the power to administer oaths and affirmations in matters before said board, and the sessions of said board shall be held from time to time as in its notice specified, for a period of two weeks and no longer."

The opinion of the Supreme Court of Washington is found at 9 Wash. 607.

Plaintiff in errors contends—

1. That the sections of the Washington revenue law of 1891 above quoted are invalid since they provide for the taxing of the capital and property of the bank instead of shares of its stock.

2. That the manner in which the assessment complained of was made constituted it an assessment on the capital and property of the bank and not on the shares of its stock.

3. That the failure to assess the shares of gas and insurance and wharf companies effected a discrimination against shares in national banks.

4. That the omission to assess the other moneyed capital alleged, resulted in the taxation of the shares of national banks at a greater rate than is assessed on other moneyed capital in the state.

5. That the action of the taxing officers complained of, violated the provisions of the federal constitution forbidding states to deprive any person of life, liberty or property without due process of law or to deny any person the equal protection of the laws.

6. That the assessment to plaintiff of 1,511 shares of stock in excess of its capitalization vitiated the assessment.

ARGUMENT.

I.

THE VIOLATION OF THE FEDERAL CONSTITUTION.

(*a.*) This point cannot be raised in this court not having been raised in the court below. The "title, right, privilege or immunity" contended for by the plaintiff in error was not "claimed under the constitution of the United States," and the decision of the court was not against a "title, right, privilege or immunity" so claimed.

Spies v. Illinois, 123 U. S. 131, 181.
French v. Hopkins, 124 U. S. 524.

Clark v. Pennsylvania, 128 U. S. 395, 397.
Morrison v. Watson, 114 U. S. 111, 115.
Winona & St. Peter Land Co. v. Minnesota, 159 U. S. 540.

Even had the point been raised on a petition for rehearing, it would not be considered by this court.

Chappell v. Bradshaw, 128 U. S. 132, 134.
Texas Pacific R. Co. v. Southern Pacific R. Co., 137 U. S. 48, 53.
Caldwell v. Texas, 137 U. S. 692, 698.
Loeber v. Schroeder, 149 U. S. 580, 585.
Bushnell v. Crooke, M. & S. Co., 148 U. S. 682, 689.
Miller v. Texas, 153 U. S. 535, 538.
Sayward v. Denny, 158 U. S. 180.

Being raised for the first time on the assignment of errors, it cannot be considered by this court.

Ansbro v. United States, 159 U. S. 695, 698.

(*b.*) The fourteenth amendment to the federal constitution does not undertake to control the mode of imposing a tax if notice and an opportunity for a hearing are afforded.

Walston v. Nevin, 128 U. S. 578, 582.
Palmer v. McMahon, 133 U. S. 660, 668.
Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 239.
Paulsen v. Portland, 149 U. S. 30, 41.
Pittsburgh, etc., R. Co. v. Backus, 154 U. S. 421, 427.

(*c.*) Nor does this amendment limit the taxing power of the state by imposing on it any rule of equality.

Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 237.
Chester v. Pennsylvania, 134 U. S. 240.
Home Ins. Co. v. New York, 134 U. S. 594, 606.
Pacific Express Co. v. Siebert, 142 U. S. 339, 351.
Charlotte, etc., R. Co. v. Gibbes, 142 U. S. 386, 394.
Jennings v. Coal Ridge, etc., Co., 147 U. S. 147.
Giozza v. Tiernan, 148 U. S. 657, 662.

II.

THE STATUTORY PROVISION FOR THE TAXATION OF THE CAPITAL STOCK OF NATIONAL BANKS.

(*a.*) Sections 5214 and 5219 forbid the taxation of the capital and permit only the taxation of shares of stock of national banks.

Van Allen v. The Assessors, 3 Wall. 573.
National Bank v. Commonwealth, 9 Wall. 353, 359.

(*b.*) Sections 21 and 23, ch. 140, Laws of 1891, above quoted, as construed by our Supreme Court provide for the taxation of the shares only of national banks.

Paul v. McGraw, 3 Wash. 296, 303, 307.
First National Bank v. County of Chehalis, 6 Wash. 64.

An instance where words in a statute stating that *capital stock* is to be assessed are assumed to provide a tax on *shares* is found in

Newark Banking Co. v. Newark, 121 U. S. 163, at p. 164.

(*c.*) This construction by the state court will govern this court.

People v. Weaver, 100 U. S. 539.
Palmer v. McMahon, 133 U. S. 660, 665.
First National Bank v. Ayers, 160 U. S. 660, 664.
Stryker v. Goodnow, 123 U. S. 527.
Morley v. Lake Shore & M. S. R. Co., 146 U. S. 162.

(*d.*) No federal question arises where the validity of the state statute is admitted.

Commercial Bank v. Buckingham, 5 How. 317, 342.
Banking Co. v. Marshall, 12 How. 165, 167.

No federal question arises when the exemption from taxation claimed under the federal law is sustained.

Tyler v. Cass County, 142 U. S. 288.

There can be no federal question therefore in this case where the state court construes the statutes as not providing for the taxation of bank capital which the federal law exempts from taxation, and as providing for the taxation of bank shares which the federal law permits to be taxed. If this court would ever depart from its rule of following the construction given to the statute of a state by

its court of last resort, it surely would not violate the rule in order to give the state statute a construction that would render it invalid.

Baltimore Traction Co. v. Baltimore Belt R. Co., 151 U. S. 137.

(c.) The assessment of the shares against the bank and the collection of the same therefrom seems to have been contemplated by the framers of the federal statutes and has been repeatedly upheld by this court.

National Bank v. Commonwealth, 9 Wall. 353.
Lionberger v. Rouse, 9 Wall. 468.
Van Slyke v. Wisconsin, Bagnall v. same, 154 U. S. 581.
Bell's Gap. R Co. v. Pennsylvania, 134 U. S. 232, 238.

In National Bank v. Commonwealth, 9 Wall. 353, the statutory tax of 50 cents per share was imposed in a lump sum of $4,000 on the bank, the statute nowhere providing for the reimbursement of the bank by the shareholders in any manner whatever.

The bank contended that the tax was practically a tax on itself and not on its shareholders. (9 Wall. 353, 361.)

But this court held that the tax was practically a tax on the shares and the shareholders, and not on the bank or its capital.

In Waite v. Dowley, 94 U. S. 527, this court held that this assessment of the tax against the bank was an illustration of the general rule of Section 5219 U. S. Revised Statutes, remitting the *method* of taxing bank shares to the states, which rule empowered the states to require bank cashiers to furnish to the tax officers of the state certificates containing information useful or necessary in order to ascertain the value of the shares and the residence of their owners.

So true is it that the payment by the bank of taxes on its shares is a payment of the shareholders' money that it was the duty of the bank to include the amount of such payments in the statement of its earnings on which, under the Act of June 30, 1864, an internal revenue tax was required to be paid.

Central National Bank v. United States, 137 U. S. 355, 363.

Plaintiff in error in its brief, mistakenly cites City of Boston v. Beal, 51 Fed. Rep. 306, as supporting the doctrine that when the bank charges the tax paid to its expense account, the tax falls not on the shareholder but on the bank; but an examination of that case shows that the payment of the tax by the bank is practically a payment by its shareholders except when by reason of the insolvency of the bank, the payment by the bank causes the tax ultimately to fall on its creditors.

In this case no insolvency of the plaintiff in error is alleged. This court does not try moot cases whether the questions involved relate to the taxation of national banks or otherwise.

Waite v. Dowley, 94 U. S. 527, 534.

Plaintiff in error in its brief accuses the Supreme Court of Washington of confounding the method of collection with the power to assess. It will be observed that if that court is guilty as charged it is so in company with this court when it decided National Bank v. Commonwealth, 9 Wall. 353, where the statute the tax under which was upheld, provides only for assessment of the tax against and payment by the bank and ignores the shareholders altogether.

(*f.*) The tax on the shares may be collected from the national bank by distraint.

First National Bank v. Douglas County, 3 Dillon, 330, 334.
National Bank v. Morrison, 1 McCrary, 204.

III.

THE LISTING IN SOLIDO BY THE ASSESSOR.

(*a.*) This listing being in compliance with the statutes and approved by the Supreme Court of Washington was valid.

(*b.*) The listing of the shares alleged in the complaint shows that the tax was imposed on the shares and not on the capital.

The allegation in the complaint (par. 5 f. 3) is that the assessor "did list to the complainant as owner thereof, 2,500 shares of complainant's capital stock, valuing the same for the purposes of assessment and taxation thereunder at the rate of $100.00 per share, and did list the same *in solido* to complainant as owner thereof at a total valuation of $25,0000 00."

It appears, therefore, by the allegations of the complaint, that the assessment was not *in solido* at all, the use of that expression being simply the pleader's characterization of the facts antecedently alleged, namely, that 2,500 shares of complainant's capital stock was listed to the complainant.

The true meaning of the expression "*in solido*" is an assessment of the CAPITAL STOCK of the bank, as such, as distinguished from an assessment on the shares.

Conceding as claimed by plaintiff in error, that national banks and the shares thereof may be taxed by the state only, to the extent granted by federal legislation, we fail to find any provision of law or any decision of this Court which even intimates that it is unlawful to list or assess the shares in the name of the bank.

The case of National Bank v. Commonwealth, 9 Wall. 353, bears directly on this point. That decision fully sustains the position that the shares may be listed and assessed directly against the bank as the agent of its shareholders.

A careful examination of Section 5219 Revised Statutes U. S., makes it plain that Congress intended that the taxes on the shares should be collected by proceedings against the shareholders' interest in the bank itself. That section provides:

"The legislature of each state may determine and direct the manner and place of taxing all the shares of National Banking Associations within the state, subject only to the two restrictions; that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any National Banking Association owned by non-residents of any state shall be taxed in the city or town where the bank is located and not elsewhere."

It will be observed in the first place, that the manner of taxing the shares is left entirely to local legislation. The word "manner" can mean nothing but the mode of listing and assessing the property and collecting the tax. In the second place, the taxes and shares of non-residents are to be taxed WHERE THE BANK IS LOCATED, AND NOT ELSEWHERE. By what possible means can a tax be collected on the shares of non-residents except by making the stockholders' interest in the bank liable therefor by some kind of proper legislation?

The provisions of this section in relation to taxation of shares

of non-residents, seems to have been entirely overlooked in the cases cited by appellant, namely:

First National Bank v. City of Richmond, 39 Fed. 309.
National Bank v. City of Richmond, 42 Fed. 877.

On the point, therefore, of the claimed assessment "*in solido*," we say that no assessment "*in solido*," properly so-called, is alleged, and the mode of the assessment as alleged is the mode approved by this court.

The shares of national banks are not aliquot parts of its capital, but are themselves a distinct species of property.

Exchange Bank v. Miller, 19 Fed. 372.

In arguing this proposition, counsel for plaintiff in error assumes that because property is listed to or in the name of the bank, it necessarily follows that it is the proprietary interest of the bank which is assessed. Such is not the case. The manner of making up an assessment roll is a thing usually regulated by law, and by section 5219 the federal government leaves the mode of making up the roll to the determination of the state legislature. Such laws usually provide in what name property shall be assessed. By the revenue law of 1891 real property was not assessed in the name of any person.

Revenue Law of 1891, Section 45.

By section 8 of the same law, property of a minor child is listed in the name of the guardian, or the person having such property in charge; the property of an idiot or lunatic is listed by the person having charge of the property; the property of a person for whose benefit it is held in trust, by the trustee, executor or administrator; the property of corporations whose assets are in the hands of receivers, by such receivers or their agents; money and property in litigation in the possession of any county officer must be assessed to the custodian thereof and the taxes thereon paid by the custodian.

Many other similar provisions are common in all tax laws, and it is entirely erroneous to assume, because the shares are listed and assessed in the name of the bank, that the proceedings amount to a tax against the bank. As well might guardians and receivers claim that they are entitled to relief against similar assessments.

(*c.*) Section 23, above quoted, makes the bank the agent of the shareholders in paying the tax. This statutory agency of the bank can in no wise be affected by the listing of the shares in the name of the bank. Since the bank pays the whole tax as agent of the shareholders, the names of the shareholders are not necessary to the assessment or collection of the tax, and it is even held that for this reason the furnishing of a list of the shareholders by the cashier to the assessor cannot be compelled.

Paul v. McGraw, 3 Wash. 296.

(*d.*) The Supreme Court of the state having held the action of the assessor to be authorized by the statutes as above construed, there is no federal question.

Sage v. Louisiana Board of Equalization, 144 U. S. 647.

The taxation of the capital of a corporation where its value is ascertained by multiplying the number of shares by the market value of each share is practically equivalent to the taxation of shares at their market value, where no deductions for indebtedness are allowed.

Mercantile Bank v. New York, 121 U. S. 138, 164.

The cases cited by plaintiff in error (on page 9 of its brief), as holding assessments *in solido* invalid are cases in all of which the capital and not the shares were assessed. Also in all these cases except Collins v. Chicago, 4 Bissell, 472, it appears that the state law permitted deductions on account of indebtedness, of the benefit of which deductions the shareholders were deprived by such assessment. Furthermore, in First National Bank of Leoti v. Fisher, 45 Kan. 726, and Miller v. First National Bank, 46 Ohio St. 424, it appears that the state statute expressly requires the listing of the shares in the name of the shareholder.

Since in this case the assessment was of the *shares* and not of the *capital*, since the revenue law of Washington for 1891, allowed no deductions for indebtedness for purposes of assessment or taxation, and since the same law did not require the assessment of the shares in the names of the shareholders, the cases cited have no bearing on the case at bar.

Plaintiff in error at page 10 of its brief mistakenly says, that in National Bank v. Commonwealth, 9 Wall. 353, the assessment

had been made against the stockholders. On the contrary the assessment was a statutory tax of 50 cents per share, assessed against the bank in one sum of $4,000, and the shareholders were not referred to or considered, either in the tax proceedings or in the Kentucky statutes providing for the tax.

Plaintiff in error further contends that the doctrine of National Bank v. Commonwealth, 9 Wall. 353, applies only when suit (in the nature of garnishment) is brought against the bank for the tax and not when the collection of the tax is sought to be enforced by distress, and that Hershire v. First National Bank, 35 Iowa, 272, points out the distinction. On the contrary Bank v. Commonwealth approves the collection of the tax from the bank as a method of collecting from the shareholder, however that collection against the bank may be enforced. It nowhere sets limits by even the remotest implication to the mode of collecting from the bank.

Furthermore, Hershire v. First National Bank was itself an action against a bank for a tax, and the court held that under the Iowa Statute compelling the bank to pay as agent of the stockholders, and the statute requiring an agent to pay taxes for his principal only when he has funds of the principal under his control, in an action to recover the tax from the bank the complaint must allege the existence under the control of the bank of funds of its stockholders.

By a parity of reasoning in this case the plaintiff in error should have alleged in its complaint that it had no funds of stockholders under its control such as surplus, undivided profits or dividends.

IV.

THE FAILURE TO ASSESS STOCKS OF NON-BANKING CORPORATIONS.

The discrimination forbidden by the federal statute is a discrimination as regards "other money capital," not as regards other personal property, or shares of the capital stock of corporations not engaged in the banking business. The exemption of property not "moneyed capital" from taxation, or the taxation of such property at a lower aate than "moneyed capital" causes "no taxation greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state."

First National Bank v. Waters, 7 Fed. Rep. 152.
McMahon v. Palmer, 102 N. Y. 176.
People v. Commissioners, 4 Wall. 244.
Mercantile Bank v. New York, 121 U. S. 138.
Palmer v. McMahon, 133 U. S. 660, 667.
Talbot v. Silver Bow Co., 139 U. S. 438.

It is contended by plaintiff in error that it appears by the complaint that six million dollars of money capital has escaped assessment and taxation in the City of Seattle, and therefore the assessment and taxation of the shares of the national banks was void.

A careful examination of the allegations of the complaint in the light of the decisions of this court upon this subject will show that there is no allegation that "taxable moneyed capital" has been exempted in such a manner as to amount to discrimination against the shares of national banks. The first decision of this court bearing directly upon this point was that of "Hepburn v. School Directors, 23 Wall. 480."

The question there involved was whether the exemption from local taxation of mortgages, judgments, recognizances and moneys due upon agreements for the sale of real estate in the hands of individuals was so substantial in its nature and operation as to affect the integrity of a general assessment for local purposes. In holding that this exemption did not amount to any discrimination against national banks, the court said:

"This is a partial exemption only. It was evidently intended to prevent a double burden by the taxation both of property and debts secured upon it."

It is the established law, therefore, that the exemption of mortgages and the debts represented thereby, is a just exemption made to avoid double taxation, and is no discrimination.

The complaint does not allege that the money capital which is invested in loans, discounts and securities, was anything more than *mortgage debts*.

The plaintiff in error not having negatived the proposition that this moneyed capital is and was mortgage debts, it must be assumed that such was the fact, and that the full amount of this capital has been properly taxed by the taxation of the property mortgaged.

In the case of Boyer v. Boyer, 113 U. S. 689, cited by plainitff in error, the court found that an illegal discrimination resulted from the laws of Pennsylvania and on this point the court says:

"The burden of county taxation imposed by the latter act has at all events been removed from all bonds or certificates of loan issued by any railroad company incorporated by the state; from shares of stock in the hands of stockholders of any institution or company of the state which in its corporate capacity is liable to pay a tax into the State Treasury under the act of 1859; from mortgages, judgments and recognizances of every kind; from money due or owing upon articles of agreement for the sale of real estate; from all loans, however made, by corporations which are taxable for state purposes, when such corporations pay into the State Treasury the required tax on such indebtedness."

It will be observed that this exemption is much broader than as stated in plaintiff in error's brief, as it includes much in addition to "mortgages, judgments and recognizances."

In the late case of Mercantile Bank v. New York, 121 U. S. 138, the case of Boyer v. Boyer, is greatly modified, while that of Hepburn v. School Directors is expressly approved.

It appears from the case of Mercantile Bank v. New York, that a state can legitimately exempt deposits in savings banks, though amounting to enormous sums, municipal bonds of large amount, and shares of stock in trust companies, the companies themselves being subject to another tax. The court says:

"The main purpose, therefore, of Congress in fixing the limits to state taxation on investments and the shares of national banks was to render it impossible for the state in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

And further:

"The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loans, discounts or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans or in securities for the payment of money, either as invest-

ment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property."

It will be see by the foregoing quotation that it is the use of money for the purpose of making a profit by its use as money, when the same is carried on as a business, that constitutes moneyed capital within the meaning of the law. It will be further seen that in this very exhaustive definition of moneyed capital, in which every word and clause seems to have been selected with the greatest desire for accuracy and plain statement, the word "mortgage" is carefully excluded. In connection with this fact it is worthy of consideration that near the close of the opinion, again referring to the cases of Hepburn v. School Directors and Adams v. Nashville (in which last case the court held that municipal bonds could properly be exempted without exempting national bank shares,) the court proceeds:

"The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason and not operate as an unfriendly discrimination against investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the state exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation."

Reading, then, the language of the complaint in the light of the exhaustive definition of this court, we find:

First. The complaint in this case, unlike the complaint in other cases which have been before this court, does not state any facts bringing to the knowledge of the court any exemption of moneyed capital. The use of the term "moneyed capital" in the complaint, is a mere legal conclusion. The pleader should state specifically the property omitted from taxation.

Second. It does not appear but that the moneyed capital exempted consisted of deposits in savings banks or other matter exempted, which as above noticed, the state had a right to exempt.

Third. It does not appear but that all the loans, discounts,

and securities were simply mortgage debts, which as above noticed, the state had a right to exempt.

Construing together the decisions in Hepburn v. School Directors, and Mercantile Bank v. New York, there can be no doubt, we think, but that this court wishes it plainly understood that it is not necessary to impose a double burden of taxation upon mortgaged property in order to require national bank shares to pay their proper portion of the public expenses.

V.

THE OMISSION TO TAX PERSONAL CREDITS.

(*a*). This omission is alleged in the complaint to have been made pursuant to an opinion of the attorney general duly rendered, of which opinion the Supreme Court of Washington took judicial notice.

First National Bank v. Chehalis County, 6 Wash. 64, 70.

In this opinion the attorney general held that with the exception of credits of banks and bankers, brokers and stock jobbers, bonds, bank stocks and stocks other than bank stock, "credits" were exempt from taxation.

Opinions Attorney General, 1891, p. 59.

These exempted credits consisted mainly of accounts, promissory notes and mortgages.

First National Bank v. Chehalis County, 6 Wash. 64, 70.

It thus appears that the exempted credits consisted in part of "moneyed capital" and in part of other choses in action.

It also appears that while some "moneyed capital" was exempt, such moneyed capital as consisted of credits of banks and bankers, brokers and stock jobbers, of bonds, of corporate stocks, or of cash or bullion, were not exempt at all.

Secs. 3, 4, 16, 21, 22, 23, ch. 140, Laws of Wash. 1891, pp. 281, 282, 285, 289, 290.

(*b*). This court has repeatedly held that the federal inhibition of taxation that discriminates against national banks has no application to general exemption laws founded on just reason and

not operating as an unfriendly discrimination against investments in national bank shares.

People v. The Commissioners, 4 Wall. 244.
Hepburn v. School Directors, 23 Wall. 480.
Adams v. Nashville, 95 U. S. 19.
Mercantile Bank v. New York, 121 U. S. 138, 161.
Bank of Redemption v. Boston, 125 U. S. 60, 68.

1. The exemption of credits in this case subserves the purpose of preventing double taxation.

Opinions Attorney General, 1891, p. 59.

Such a purpose is recognized by this court as a legitimate basis for an exemption law, though some moneyed capital is thereby rendered exempt.

Hepburn v. School Directors, 23 Wall. 480.

2. The exemption in question is not an unfriendly discrimination against national banks. The exemption is of certain classes of credits. Only a small fraction of the exempt credits was embraced in the term "moneyed capital;" only a small fraction of "moneyed capital" was comprised in the exempt credits. The consequence could not be, either in intent or effect, an unfriendly discrimination against national banks.

"Necessarily there may be other moneyed capital in the locality than such as is exempt. If there is, moneyed capital as such is not exempt. Some part of it only is. It could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt"

Hepburn v. School Directors, 23 Wall. 480, 485.

3. Under the revenue law of 1891, both the assets and shares of non-banking corporations in Washington are taxable.

Secs. 3, 20 and 21, ch. 140, Wash. Laws, 1891, pp. 280, 289.
Sec. 16, Id. (item 23 in list).

The assets of national banks consisting largely of promissory notes are exempted from taxation by the federal law. The exemption in question gives to the residents and corporations of the

state the benefit of a portion of the exemption enjoyed by national banks.

4. The exemption in question does not affect capital engaged in the banking business. State banks in Washington are assessed in the same manner as national banks.

Secs. 21 and 23, ch. 140, Wash. Laws, 1891, pp. 289, 290.

Private and foreign bankers are assessed in the full amount of the money used in their business.

Sec. 22, ch. 140, Wash. Laws, 1891, p. 290.

Banks, bankers, brokers and stock jobbers are required to list for taxation all their credits.

Sec. 16, ch. 140, Wash. Laws, 1891, p. 286 (item 21).

It is apparent, therefore, that the exemption in question does not, in the language of Justice Matthews, in Mercantile Bank v. New York, 121 U. S. 138, 155, "create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character."

Bressler v. Wayne, 32 Neb. 834, 843.

Compare Van Allen v. Assessors, 3 Wall. 573, with People v. Commissioners, 4 Wall. 244.

5. The capital represented by shares in national banks is largely engaged in dealing in credits that are within the exemption in question. The capital employed in the business of dealing in exempt property should not itself be exempt. It is no discrimination, therefore, against shareholders of national banks to exempt, in addition to accounts, promissory notes and mortgages in buying and selling and holding which their capital is used.

6. The exemption in question besides diminishing double taxation, served to encourage thrift and savings. The exception of banks and bankers from this exemption is in harmony with this purpose, since the encouragement of thrift among the people in general does not require the extention of the exemption to banks and bankers, brokers and stock jobbers.

The exemption of savings bank deposits being an exemption of

moneyed capital that does not compete with the business of national banks and being founded in reason, causes no discrimination against shares in national banks though such savings in the state amount to $500,000,000 and upwards.

Mercantile Bank v. New York, 121 U. S. 138, 160.
Bank of Redemption v. Boston, 125 U. S. 60, 68.

(*c.*) The question of the sufficiency of pleadings to present a matter for determination is one of state law and involves no federal question.

Grand Rapids & I. R. Co. v. Butler, 159 U. S. 87, 91.
Moore v. Missouri, 159 U. S. 673, 678.
Caldwell v. Texas, 137 U. S. 692, 698.

Iowa Central Railway Co. v. Iowa, 160 U. S. 389, 393.
Leeper v. Texas, 139 U. S. 462, 468.

This being an independent ground of decision, not involving a federal question, and broad enough to support the judgment of the state court, the writ should be dismissed.

Williams v. Weaver, 100 U. S. 547.
Rutland R. Co. v. Central Vermont R. Co., 159 U. S. 630, 640.

In any case the complaint fails to show that the moneyed capital exempted from taxation was of such character or was in such considerable quantity as regards the total moneyed capital of the state and such as was invested in shares of national banks as to affect any actual discrimination.

First National Bank v. Ayres, 160 U. S. 660, 667
Dutton v. Bank 53 Kan. 440, 461.

The exemption of an amount of moneyed capital large in itself but small relatively to the whole amount of moneyed capital cannot be deemed an unfair discrimination.

Mercantile Bank v. New York, 121 U. S. 138, 161.

Plaintiff in error complains that the average assessment of shares of national bank stock was 18 per cent. above par while that of state bank stock was 35 per cent. below par. No showing is made as to the relative average value of the respective shares. The greater security to customers of national banks,

resulting from their careful supervision by the government might well make their shares more valuable than those in state banks.

Furthermore, there is no allegation that the difference in the assessment, if prejudicial, was due to any unfair provision of law or rule of assessment. Such an averment is necessary to render the complaint good on demurrer.

National Bank v. Kimball, 103 U. S. 732, 735.

Plaintiff in error argues that the exemption of credits alleged, subjects its shares to a tax that is *excessive* whether void or not.

For any erroneous or excessive taxation it had ample and complete remedy by making application to the city board of equalization.

Stanley v. Supervisors of Albany, 121 U. S. 535, 551.

If the excessive tax was so imposed as to enable a court of equity to interfere, plaintiff should have paid or tendered the tax rightfully due.

State Railroad Cases, 92 U. S. 575, 616.
Cummings v. National Bank, 101 U. S. 153.
National Bank v. Kimball, 103 U. S. 732.
Albuquerque Bank v. Perea, 147 U. S. 87, 90.

This rule prevails in Washingtan.

Andrews v. King County, 1 Wash. 46, 54.

A state statute forbidding deduction from bank shares that are allowed generally from credits is not *void*, it is simply inoperative as to persons entitled to deductions.

Supervisors v. Stanley, 105 U. S. 305.

By a parity of reasoning the tax is not void if a discrimination exists; it is inoperative to the extent of the excess caused by the discrimination and the remainder should be paid or tendered.

Defendants in error therefore believe that they may fairly ask this court to hold —

1. That the decision of the Washington Supreme Court that the complaint was too vague and indefinite to allege sufficiently a discrimination against the shares of the plaintiff in error involved

no federal question and was broad enough to support its judgment, and hence that the writ of error should be dismissed.

2. That the complaint does not sufficiently allege a discrimination against the shares of the plaintiff in error in the matter of taxation.

3. That the statutes of Washington as construed by its supreme court provide for the taxation of the shares and not the capital of national banks, and that the collection of the tax from the banks is valid.

4. That the assessment in this case was of the shares and not of the capital of the plaintiff in error.

5. That the exemption of the credits specified neither contemplated nor effected a discrimination against shares of National Banks.

6. That the federal constitution has not been violated by the taxing officers of the state, and no right claimed thereunder has been denied by the Washington courts.

7. That the complaint does not show that before the commencement of this action the plaintiff had availed itself of the tribunals provided by the laws of the state to obtain a proper review of the assessment upon its shares.

Respectfully submitted, JOHN B. ALLEN,
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